

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29570
Docket No. MW-29272
93-3-90-3-161

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employees
(
(CSX Transportation, Inc. (former
(Seaboard System Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned junior Track Subdepartment employe R. K. Mace instead of Bridge Tender R. L. Peterson to perform relief and overtime service on the Rice Creek Drawbridge at Mile Post 694.1 on the Sanford Subdivision beginning December 25, 1988 and continuing during January, February, March, April and May, 1989 [System File 37-SCL-89-7/12(89-431) SSY].

(2) As a consequence of the aforesaid violation, Mr. R. L. Peterson shall be allowed three hundred forty-four (344) hours of pay at his straight time rate and twenty-one and one-half (21.5) hours of pay at his time and one-half rate."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant is a Bridge Tender at the Rice Creek Drawbridge. Prior to September 1, 1988, a Relief Bridge Tender relieved the Claimant and other Bridge Tenders on their rest days. When the Relief Bridge Tender transferred elsewhere, the Carrier posted a bulletin for the position, but no bids were received. For a period of time, the Claimant worked his rest days in view of the relief position vacancy. Beginning December 25, 1988, and thereafter, the Carrier utilized an unassigned Trackman, qualified as a Bridge Tender, to relieve the Claimant.

The Organization argues that the Claimant's rights were violated in that work for which he was available was assigned to an employee with no Bridge Tender seniority.

The Carrier raises various defenses. One of these is that the matter was "previously settled" by Third Division Award 24266 concerning the same parties in which the Board was concerned with relief of Bridge Tenders. That Award, however, interprets Article 12(b), which involves replacements for employees on vacation. Finding the language of Article 12(b) "sufficiently ambiguous," the Award supported the use of employees without Bridge Tender seniority for vacation replacement.

Award 24266 interpreted the particular language concerning vacation replacement. There is no basis to broaden its effect to rest days on which employees with seniority are available for work.

The Organization obviously recognizes the right of the Carrier to establish a Relief Bridge Tender position. This, in fact, is what was attempted. The fact that there were no bids in the initial bulletining does not, however, diminish the seniority rights of Bridge Tenders. Indeed, this was apparently recognized by the Carrier, when its response stated that the Carrier was "in the process of handling to transfer [the employee who was utilized] into the Bridge Tender's seniority group whereby he will establish seniority in that Subdepartment."

The Carrier also notes that the Claimant had requested a one-week vacation and a one-day leave during the brief period he was assigned on a seven-day basis, thus suggesting his unavailability to continue the schedule. The Board finds no support for this view based simply on a one-day absence and a vacation. In addition, the Carrier notes it was encouraged by the previous General Chairman to maximize use of available Maintenance of Way employees in such situations. While this may well be the case, this does not permit violation of seniority rights. As to an alleged recognized practice of using employees with no Bridge Tender seniority for

rest day relief, no demonstration of such record was provided to the Board. To the contrary, the claim handling record shows an undisputed contention by the Claimant that a previous Claim had been sustained in his favor under identical circumstances.


The Claim was originally for lost straight-time hours, and the Organization sought thereafter to amend the Claim to request pay at the punitive rate. Under the circumstances, the Board finds that the Claim should be sustained as originally presented at the straight-time rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.