Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32515
Docket No. MW-31560
98-3-93-3-529

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Mr. A. E. Joyner, a B&B Subdepartment carpenter from the Jacksonville-Tampa Seniority District, to operate the Carrier's drawbridge at Mile Post SMA 43.2 on the Florence-Savannah Seniority District on August 6, 7, 8, 9, 11 and September 10, 11, 12, 13 and 14, 1990 instead of assigning Maintenance of Way General Subdepartment, Group D - Drawbridge Operators E. Pollins, J.D. Youngblood and R. K. Seckinger from the Florence-Savannah Seniority District [System Files 90-97/12(90-1076) and 90-109/12(91-7) SSY].

(2) As a consequence of the violation referred to in Part (1) above, Claimants E. Pollins, J. D. Youngblood and R. K. Seckinger shall each be allowed an equal proportionate share of eighty (80) hours' pay at their respective straight time rates and nine (9) hours' pay at their respective time and one-half rates."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Organization submitted a claim seeking a total of 40 hours straight time and nine hours of overtime on behalf of Florence-Savannah Seniority District Group D - Drawbridge Operators arguing that Carrier violated the Agreement when it used a BMWE Carpenter assigned to the Jackson-Campus Seniority District to operate a drawbridge on the Florence-Savannah Seniority District between 9:30 A.M. and 5:30 P.M. on August 6, 7, 8, 9 and 11, 1990. The Organization also asserts that Carrier used this ineligible employee on an overtime basis from 5:30 P.M. to 9:00 P.M. on August 6 and from 5:30 P.M. to 11:00 P.M. on August 7, 1990.

The gravamen of this dispute involves a situation where the regularly assigned Drawbridge Operator was on vacation during the period of August 6 - 10, 1990. The Claimants held regularly assigned positions and there were no furloughed Bridge Tenders on the Seniority District. For this reason, Carrier called furloughed Carpenter A. E. Joyner to perform the relief on August 6 - 10 and K. Waye, who was regularly assigned to the Trout River Bridge on Sunday through Wednesday, to work the position on August 11.

The Organization asserts that seniority rights of employees are confined to their respective seniority districts and assignment of employees across seniority boundaries is in violation of the Agreement. Thus, it insists that Carrier violated the Agreement when it permitted the employees in question to perform the vacation relief work.

The Board has previously decided the identical case between the same parties involved here. In Third Division Award 24266 it was determined that it was proper for the Carrier to use employees who were not Group D employees to fill vacation absences on bonafide Bridge Tender positions. Nothing in the record evidence establishes that Award 24266 was palpably erroneous.

Therefore, consistent with the time honored rule of stare decisis, we conclude that the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of March 1998.

LABOR MEMBER'S DISSENT
TO
AWARD 32515, DOCKET MW-31560
(Referee Scheinman)

A strong dissent is required because the reasoning of the Majority in Award **32515** is misguided and fundamentally flawed. An award which is misguided and fundamentally flawed is of no value as precedent.

In this case, the Majority unquestionably relied upon Award **24266** (Referee Scheinman) because it involved an interpretation of Article 12(b) of the National Vacation Agreement and the same parties. Although Award **24266** also involved assignments to a bridge tender vacancy using an employe from another classification, that is where the so-called "identical" nature of that case to the instant case ends.

From an uncomplicated reading of Award **24266**, two (2) things are clear: First, that the claimant in that case was "already on full time assignment" was considered *important*, and; Second, that there was an undenied and acquiesced to practice of assigning employes from other classes was considered ***determinative*** because the language of Article 12(b) was viewed as ambiguous. However, the facts considered by Award **32515** which the Majority glossed over reveal it to be a significantly different case - not "identical".

Although two (2) of the three (3) Claimants in the case decided by Award **32515** were regularly assigned to bridge tender positions working forty (40) hours each week and were at least arguably on *full time assignment* during the claim period, the third Claimant, Mr. Pollins, was regularly assigned to work a bridge tender position ***only two (2) days each week***. Hence, the "full time assignment" factor which was found to be *important* in Award **24266** could have no valid application to the circumstances framing Award **32515** insofar as Claimant Pollins was concerned.

In addition, although Award **24266** found an "acquiesced to practice" ***determinative***, that case only considered assignments across classification lines and undenied statements about "practice". As a review of the Employes' "Statement of Claim" makes manifest, the dispute decided by Award **32515** involved assignments across both classification and established seniority district boundary lines. The obvious implication being that the "practice" found to be ***determinative*** in Award **24266** could only fit part of the violations considered in Award **32515**. Moreover, the **ONLY** evidence presented in the on-property record of the dispute decided by Award **32515** documented that the Carrier had paid a conceptually identical claim and that Claimant Pollins had routinely filled bridge tender

vacation vacancies on the Florence-Savannah Seniority District over the past four (4) years (Employes' Exhibit "A-9"). Hence, the "evidence" considered in the dispute decided by Award **24266** could **NOT** be considered as ***determinative*** of the facts herein. Consequently, the Majority's decision to follow previous Award **24266** was hasty and in grave error.

Again, the Majority glossed over significant facts which distinguish the instant circumstances from those considered in Award **24266**. Because the Majority's characterization of the instant case as "identical" to that decided by Award **24266** is fundamentally flawed and its adherence to "...the time honored rule of stare decisis" is misplaced and misguided, Award **32515** can have no value as precedent.

Respectfully submitted,

Roy C. Robinson
Labor Member