

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42384  
Docket No. MW-41738  
16-3-NRAB-00003-110356**

**The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.**

**(Brotherhood of Maintenance of Way Employees –  
( Division IBT Rail Conference  
PARTIES TO DISPUTE: (   
(BNSF Railway Company (former Atchison, Topeka  
( and Santa Fe Railway Company)**

**STATEMENT OF CLAIM:**

**Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier required regularly assigned Relief Bridge Tender M. Frazier (who held a regular bulletin assignment with work days of Monday through Friday and rest days of Saturday and Sunday) to observe rest days on the Wednesday and Thursday dates of March 10, 11, 17, 18, 24, 25, 31, April 1, 5, 6, 12 and 13, 2010 and when it required him to work on the Saturday and Sunday dates of March 13, 14, 20, 21, 27, 28, April 3, 4, 10, 11, 17, and 18, 2010 (System File BNSF-507-JF-10/15-10-0004 ATS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Frazier shall now be compensated for ninety-six (96) hours at his respective straight time rate of pay and for the difference between his straight time rate of pay and his applicable overtime rate of pay for all the hours he worked on his assigned rest days of March 13, 14, 20, 21, 27, 28, April 3, 4, 10, 11, 17 and 18, 2010.”**

**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 essential facts of this case are not in dispute. At the time of the incident leading to the claim, the Claimant was assigned by Bulletin #81500 as Vacation Relief Bridge Tender at Carrier's Des Allemands Railroad Bridge, Des Allemands, Louisiana, M.P. 32.1. On February 26, 2010, the Claimant was instructed by the Yardmaster's Office to report to Bayou Bouf Railroad Bridge, M.P. 73.3 to relieve B.P. Andras as it was on bulletin until further notice, beginning February 27, 2010 through and including April 4, 2010. On April 4, 2010, the Claimant was instructed by Yardmaster's Office to relieve on the shift vacated by Tonito Cole until further notice, beginning on April 10, 2010 through and including April 18, 2010.

By letter of May 3, 2010, the Organization notified the Carrier that the Claimant was forced to trade straight time for overtime hours when instructed to relieve the Bayou Bouf Railroad Bridge. Specifically, the Organization's claim alleged that the Carrier improperly required the Claimant to observe rest days on his regularly assigned work days of Monday through Friday, therefore depriving him of work opportunities and related compensation. Additionally, the claim stated the Carrier improperly required the Claimant to work on his assigned rest days of Saturday and Sunday, without receiving overtime compensation. In support of its position, the Organization pointed to Rule 1, Rule 2, Rule 33(a), (c), and (d) of the BMWED Agreement. The claim was denied by the Carrier by letter of July 1, 2010.

The Organization further appealed the Claimant's compensation claim which continued to be denied by the Carrier. The claim was subsequently appealed, up to and including conference on the property on September 29, 2010, after which it remained in dispute. Accordingly, the matter is appropriate for reference to this Board for adjudication.

It is the position of the Carrier that Bridge Tenders constitute a key position on the property monitoring water traffic and operating the railroad span bridges 24

hours a day, 7 days a week. The Carrier contends it cannot assure all vacancies and vacations are always covered without Vacancy/Vacation Relief Bridge Tender positions.

The Carrier outlines three factors which it maintains are practice and required of vacancy/vacation relief workers. First, the position works other employees' vacancies and vacations on any hours and rest days without triggering overtime. Second, the employee assumes the hours of assignment and rest days of the position he/she is relieving, which could be different than the hours/rest days posted on the bulletin. Third, the relief position could work the assigned hours when he/she is not relieving any bridge tender vacancies or vacations.

In this instance, the Carrier insists the relief position was clearly bulletined for the purpose of filling vacancies/vacations. Moreover, the Carrier points to an outside investigation where another Vacancy/Vacation Relief Bridge Tender testified how his position worked in regard to his hours and days to the Vice General Chairman in the present claim. Accordingly, the Carrier urges the denial of the claim was justified.

At the outset, the Organization argues the Claimant held an assigned bulletined position with designated hours, rest days, work schedule, and headquarters, all of which fall under the provisions of Rule 33. It alleges the Carrier did not afford the Claimant wages he is entitled to when the Carrier assigned him to Bayou Bridge as relief. In particular, the Organization asserts that Rule 33(a) clearly provides that the Claimant is guaranteed the overtime rate of pay after (8) hours. Further, it contends, Rule 33(c) guaranteed Claimant be paid at his overtime rate of pay for every hour in the excess of forty (40) hours.

The Organization disputes the Carrier's evidence brought in from an outside investigation. It maintains the testimony is not relevant and has no bearing on the case. Further, the Organization emphasizes that both positions were not bulletined the same. It highlights the outside employee's bulletin did not provide him a specific assignment versus the Claimant's bulletin which specifically identified his assignment. In this case, the Organization insists the Claimant is not assuming the hours of the position he is relieving, but rather being instructed by the Carrier to perform service outside his assigned position. For these reasons, the Organization urges the claim be sustained.

The Board has reviewed all the evidence in this case. We find the relief provided by the Claimant was proper and within the scope of his position and job description as Vacancy/Vacation Relief Bridge Tender. Although the Claimant's position detailed assigned hours, rest days, and work location, the Carrier requires a relief worker to support its operational need as noted in Section 12(a) of Appendix No. 1 – Non-Operating National Vacation Agreements.

In similar fashion, the Board is in agreement with Referee Lieberman's reasoning set forth in Third Division Award 21614, provided in Carrier Exhibit 17. Accordingly, the claim is denied in its entirety.

**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 30th day of August 2016.