

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42385
Docket No. MW-41755
16-3-NRAB-00003-110366**

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 Monday, May 24, 2010, Tuesday, May 25, 2010 and Monday, May 31, 2010, and when it required him to work on Saturday, May 23, 2010, Saturday, June 5, 2010 and Sunday, June 6, 2010 (System File BNSF-509-JF-10/15-10-0005 ATS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Frazier shall now be compensated for twenty-four (24) hours at his respective straight time rate of pay and for the difference between his straight time rate and his applicable overtime rate of pay for all the hours he worked on his assigned rest days of May 23, 2010, June 5 and 6, 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, 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. During the week of May 17, 2010, the Claimant was instructed by the Yardmaster's Office to take Monday and Tuesday as rest days, May 24, and May 25, 2010. The Claimant was also instructed to report to the Baldwin Bridge to relieve Bridge Tender, Mike Lacoste's shift beginning on May 26, 2010 from 4:00 P.M. until 12:00 A.M.

By letter of June 14, 2010, the Organization notified the Carrier that the Claimant was forced into a worse position resulting in a loss of wages, work opportunity and financial hardship when instructed to relieve the Baldwin Bridge. Specifically, the Organization's claim alleged that the Carrier did not afford the opportunity for overtime, forced the Claimant to trade overtime hours for straight time hours, and deliberately reduced the Claimants wages for a total of thirty-six (36) hours. 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 subsequently denied by the Carrier by letter of August 13, 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 November 12, 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 are a key position on the property which monitor water traffic and operate 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 cites three factors which, it maintains, are common 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 wherein another Vacancy/Vacation Relief Bridge Tender explained how his position worked with 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 Baldwin 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 the Claimant be paid at his overtime rate of pay for every hour in the excess of forty (40) hours.

The Organization dismisses as baseless the Carrier's evidence brought in from an outside investigation. It emphasizes 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 stresses that 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.