

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42460
Docket No. MW-41887
16-3-NRAB-00003-120158**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(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 Tuesday, October 19, 2010 and Wednesday, October 20, 2010 and when it required him to work on Saturday, October 23, 2010 and Sunday, October 24, 2010 (System File BNSF-531-JF-10/15-11-0004 ATS).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Frazier shall now be compensated for sixteen (16) 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 October 23 and 24, 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 via Bulletin #81500 as Vacation Relief Bridge Tender at Carrier's Des Allemands Railroad Bridge, Des Allemands, Louisiana, M.P. 32.1. On October 18, 2010, Claimant was instructed by the Yardmaster's Office to take Tuesday, October 19, 2010 and Wednesday, October 20, 2010 as rest days. Claimant was also instructed to report to the Mermentau Railroad Bridge, M.P. 180.06, Mermentau, Louisiana, Prior Rights Seniority Zone I, District 800, Gulf Coast Division, to relieve swing shift Bridge Tender, Melvin Batiste, beginning on October 21, 2010 through and including October 24, 2010.

By letter of November 22, 2010, the Organization notified the Carrier that Claimant was forced into a worse position resulting in a loss of wages, work opportunity and financial hardship when instructed to relieve the Mermentau Railroad Bridge. Specifically, the Organization's claim alleged that the Carrier did not afford the opportunity for overtime, forced Claimant to trade overtime hours for straight time hours, and deliberately reduced Claimants wages for a total of 24 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 denied by the Carrier by letter of January 20, 2011.

The Organization further appealed Claimant's compensation claim which continued to be denied by the Carrier. The claim was progressed, up to and including conference on the property on June 6, 2011, 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 which monitors water traffic and operate the railroad span bridges 24 hours a day, seven days a week. The Carrier contends it cannot assure all vacancies that are vacations are always covered without Vacancy/Vacation Relief Bridge Tender positions.

The Carrier notes 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 that the relief position was clearly bulletined that it was for the purpose of filling vacancies/vacations. Moreover, the Carrier points to an outside investigation where another Vacancy/Vacation Relief Bridge Tender explained 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 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 maintains that the Carrier did not afford Claimant the wages he was entitled to when the Carrier assigned him to Mermentau Bridge as relief. In particular, the Organization asserts that Rule 33(a) clearly provides that Claimant is guaranteed the overtime rate of pay after eight hours. Further, it contends, Rule 33(c) guaranteed Claimant be paid at his overtime rate of pay for every hour in the excess of 40 hours.

The Organization dismisses as inapplicable the Carrier's evidence brought in from an outside investigation. It emphasizes that the testimony is not relevant and has no bearing on the case. Further, the Organization points out that both positions were not bulletined the same. It notes that the outside employee's bulletin did not provide him a specific assignment versus Claimant's bulletin which specifically identified his assignment. In this case, the Organization stresses that 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 Claimant was proper and within the scope of his position and job

description as Vacancy/Vacation Relief Bridge Tender. Although 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. 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 31st day of October 2016.