

Award No. 17030
Docket No. MW-14861

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement beginning on or about October 1, 1961, when it required the claimant employees to

(a) suspend work on a part of their regularly assigned work week

and to

(b) perform service during overtime hours and on rest days at their respective straight time rates. (Carrier's files VM-4-62, VM-6-62 and VM-5-62.)

(2) (a) Each of the claimants be allowed pay at his respective straight time rate for all time he was withheld from his regularly assigned position during the period beginning sixty (60) days prior to the date of claim presentation and continuing until the violation is corrected.

(b) Each of the claimants be allowed the difference between what he was paid at his straight time rate and what he should have been paid at his overtime rate for the work performed during overtime hours and on assigned rest days during the period beginning sixty (60) days prior to the date of claim presentation and continuing until the violation is corrected. (Note — date of claim presentation was March 20, 1962.)

(3) A joint check of the Carrier's records to be made to accurately determine the amount due each claimant.

The claimants are:

Track Foremen

C. Kimberlin
I. L. Kwasniewski
J. Hammack

Track Laborers

W. Kiser
R. Barrety
L. Smith
G. Gutierrez
J. Martinez
I. Caloerai
H. Figueroa
M. Delgado
G. Watts
C. Hankins
E. Panales
J. Valentino
P. Perez
S. Williams

Track Laborers

W. Hembree
S. Sanders
A. Flores
F. Ramos
R. DeLeon
J. Espinosa
R. Lockett
L. Krstevski
D. Villagram
W. Hayes
P. Onger
C. Turner
R. Kershau
D. Hammack
R. Montez

EMPLOYEES' STATEMENT OF FACTS: Prior to October 1, 1961, the claimants were regularly assigned to their respective positions with Section 25 track gangs headquartered at and assigned to the Mill Yard, Gary, Indiana, with a work week extending from Monday through Friday (Saturday and Sunday were rest days). The claimants' assigned hours were from 7:30 A. M. to 4:00 P. M., including a thirty minute meal period.

Prior to November 9, 1959, all track gangs, including the section gangs at Mill Yard, Gary, Indiana, were assigned exclusively to day service. In emergencies, the employees assigned to such gangs had been called and used to perform overtime service in accordance with Agreement rules.

Effective November 9, 1959, the Carrier, without prior negotiation with or the concurrence of the employees' authorized representatives, established a position of Track Foreman and a number of positions of Track Laborer, with assigned hours from 11:00 P. M. to 7:30 A. M., thereby creating, for the first time, a regularly assigned night track gang at this location. The Employees instituted a claim as the result of this Carrier action, contending that the establishment of said positions and gang was for the purpose of avoiding the application of the overtime rules. That case is identified as Docket No. MW-12673 and is presently pending before this Division.

Effective October 1, 1961, the Carrier again substantially changed the working conditions of its Track Sub-department forces at the Mill Yard, Gary, Indiana when, without prior negotiation with or the concurrence of the employees' authorized representatives, it arbitrarily abolished and reestablished positions and gangs for the purpose of creating "a three shift (24 hour) seven day a week (21 trick) track construction and maintenance program" at said location, although these gangs were **not** assigned to work on holidays.

The Employees have contended and continue to contend that the Carrier's action in establishing said positions and gangs was in violation of and contrary to the rules of the Agreement.

nized equipment was procured piece by piece over the next nine months. On the latter basis, it was assigned to and worked into the operations of the respective gangs. The operations throughout this period were in a state of continual adjustment and readjustment. Additional Crane Operator positions and Roadway Machine Operator positions were added to the respective gangs as more and more equipment came in. Gradually, the gangs became more and more mechanized and efficient. As this machinery was worked into the respective gangs it did not immediately replace laborers for they had to pick up the slack while an efficient mechanized operation was worked out in such close confines.

Some of this equipment was utilized 24 hours a day, 7 days a week; it of course had to be serviced and maintained on the same basis. In order to accomplish the latter, a minimal number of Motor Car Repairmen and Garage Servicemen were assigned to seven day positions, staggered jobs, on the first shift, only. Since 1951, Gary Division and Joliet Division Motor Car Repairmen and Garage Servicemen have been working on more than one shift on a Monday through Friday basis. (For corroboration of the latter statement, see pending MW File 2100, involving the instant parties.)

The increasing intensity, concentration and congestion of the traffic patterns at Gary Mill have placed a definite limit on the amount of mechanized construction and maintenance equipment that effectively can be utilized on one shift. As a matter of fact, by the end of 1962 the Carrier attained the saturation point or the maximum effective peak of construction and maintenance operations on the first shift at Gary Mill. Beyond this point only diminishing returns were experienced.

INVOLVED RULES

The applicable BMW E Schedule was revised and re-issued effective August 1, 1952, and it is on file at the Board. The previous schedule was dated effective December 1, 1945.

The Carrier and the Organization are parties to the March 19, 1949 National 40 Hour Work Week Agreement and we are parties to Article V of the August 21, 1954 National Agreement.

When the Organization's August 1, 1952 Schedule was revised, the National 40-Hour Work Week Agreement was incorporated into its body. The provisions of the National 40-Hour Work Week Agreement presently are set forth in Rules 22, 25, 27 and 28 of the August 1, 1952 bound edition of the Organization's Schedule.

The Board may also desire to examine the provisions of Rules 29(a), 30, 33, 57 and 59(e).

(Exhibits not reproduced.)

OPINION OF BOARD: Under date of November 8, 1961, Organization submitted three letters to Carrier, which together included the substance of the claim in this case; Carrier's Roadmaster replied denying the claims in three letters dated January 3, 1962; Organization never appealed these denials, but, under date of March 20, 1962, in three letters it refiled the same claims,

modifying only the remedy claimed so that instead of asking pay back to October 1, 1961, the date of the events giving rise to the claims, Organization asked for pay "retroactive sixty (60) calendar days from the date of this claim . . ."

Carrier argues that the claim should be dismissed without consideration on its merits because of failure of Organization to progress the claim within the time limits provided in the Time Limit Rule. Organization argues that the claim is a continuing claim and can therefore be filed at any time so long as the monetary remedy is not retroactive for more than 60 days from the date of filing of the claim. We hold that the Time Limit Rule does not contemplate, as claimed by Organization, that a claim, even a continuing one, may be revived once it has been permitted to die by failure of Organization timely to progress it.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

Organization did not meet the requirements of the Time Limit Rule in progressing this claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1969.