

Award No. 17033
Docket No. MW-14929

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when, for the purpose and with the effect of avoiding the application of the overtime rules it established and filled the positions of:

(a) Crane Operator at Gary, Indiana, with assigned hours from 3:30 P. M. to 12:00 Midnight, Saturday through Wednesday; (System Case No. BG-4-62 - SM-10-62).

(b) Crane Operator at Gary, Indiana, with assigned hours from 11:00 P. M. to 7:30 A. M., Monday through Friday; (System Case No. BG-3-62 - SM-9-62).

(c) Roadway Machine Operator at Gary, Indiana, with assigned hours from 7:30 A. M. to 4:00 P. M., Wednesday through Sunday; (System Case No. TG-11-62 - VM-15-62).

(2) Crane Operator J. Karas now be allowed:

(a) the difference between what he was paid at the straight time rate and what he should have been paid at the time and one-half rate for the work performed during overtime hours and on assigned rest days

and

(b) pay at the straight time rate of his regular carpenter's position for all time he was withheld from said regularly assigned position because of the violation referred to in Part (1)(a) of this claim.

(3) Crane Operator Blankenship now be allowed at his time and one-half rate for the time worked by the junior employe referred to in Part (2) of this claim from 3:30 P. M. to 12:00 Midnight, Saturday through Wednesday.

of the mechanized equipment needed to totally mechanize the maintenance and construction operations at Gary Mill. Thereafter, the bulk of this mechanized 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 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(c).

(Exhibits not reproduced.)

OPINION OF BOARD: The application of the Agreement to the events involved in this case at bottom turn on the same arguments as in the case involved in our Award No. 17031, except insofar as the procedural argument

of Carrier is involved. In that case we found that the claims arose out of the same events and, on the merits, involved the same basic contract applications as in the case involved in our Award No. 17030 which we dismissed on procedural grounds without consideration of the merits. In this case Carrier makes the same procedural argument, but we find that, while the underlying contract questions on the merits are the same, the claims herein do not arise from the same events as in the earlier case. Thus we will consider this case on its merits, and we will follow our reasoning in Award No. 17031 which for other reasons we disposed of on its merits.

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

That the Agreement was not violated.

AWARD

Claim denied.

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.