



Award No. 18328
Docket No. MW-18516

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it established positions of Repairman and Repairman Helper within its Roadway Machines Department with rest days other than Saturday and Sunday. (System file SLN-40-P-67/Case No. 476.)

(2) The aforementioned positions be terminated and be re-established with rest days of Saturday and Sunday.

(3) Repairman C. W. Lindsey and Repairman Helper G. D. Reiman be allowed eight (8) hours' pay at their time and one-half rate for each Saturday and Sunday they were required to work and eight (8) hours' pay at their straight time rate for each Tuesday and Wednesday they were prevented from working, during the period of February 4, 1967, through November 18, 1968, inclusive, because of the violation referred to within Part (1) of this claim.

(4) Repairman L. E. Clark be allowed eight (8) hours' pay at his time and one-half rate for each Saturday and Sunday that a junior repairman performed repairman's work during the period of February 4, 1967, through November 18, 1968, inclusive.

EMPLOYEES' STATEMENT OF FACTS: Claimants C. W. Lindsey and L. E. Clark hold repairmen's seniority within Seniority Group 2 of the Carrier's Roadway Machine Department. Claimant D. G. Reiman holds seniority as a repairman's helper within the same seniority group and sub-department.

Prior to the effective date of the 40 Hour Week Agreement (9-1-49), repairmen and repairmen helpers were assigned to a work week extending from Monday through Saturday, with Sundays designated as their rest day. Subsequent to September 1, 1949 and continuing without change until February 4, 1967, repairmen and their helpers have been assigned exclusively to a work week extending from Monday through Friday with Saturdays and Sundays designated as rest days. Whenever repairman's work was required to be performed on a Saturday and/or Sunday, the necessary number of repairmen and

On January 25, 1967, Division Engineer J. W. Lager received a bid from D. J. Reiman for the position offered in Bulletin No. 2. (Company's Exhibit A-2.) On January 30, 1967, the position offered in Bulletin No. 2 was awarded to the senior applicant, C. W. Lindsey. Mr. Reiman was assigned as Mr. Lindsey's helper.

During the claim period (February 4, 1967 to November 8, 1968) Repairman Lindsey and Helper Reiman performed repairs on machines in their assigned territory. A detailed report of the work performed on each Saturday and Sunday throughout the claim period appears in the exhibits as Company's Exhibits F, G, H, and J. The repair work performed on these weekends has resulted in substantial savings to the company, because of increased machine availability.

Correspondence exchanged in this dispute is attached as Company's Exhibits B through R.

(Exhibits not reproduced.)

OPINION OF BOARD: The question before us is whether or not the Carrier had the right to establish the seven-day positions herein contested.

It is the Organization's position that the work could have been done during the regular five-day schedule which prevailed before the changes.

Carrier makes considerable explanation about the changes in handling Maintenance of Way needs of the railroad, of the decrease in number of employes and the increase in equipment. Carrier contends the positions were established to perform maintenance on the weekend, when the machinery was idle, so it could be used without delay during the Monday-Friday week. They cite Rule 30B(j).

Award 5555 (Carter) said:

"... The burden rests upon the Employes to show in order to maintain their claim, that the duties of claimants' positions could reasonably be met in five days. This burden has not been met in the record here presented."

Award 10622 said:

"The determination of the number of employes needed to perform its work is the function of Management except as it has limited itself by Agreement."

We cannot find from study of this record that the Organization supplied sufficient evidence to sustain its position.

The Organization also raises the question of unilateral action by the Carrier in violation of Rule 30B(f) which it contends requires consultation before the establishment of these positions. However, Award 17081 (House) holds, on an almost identical rule, to the contrary.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 11th day of December, 1970.