

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19390
Docket Number MW-19355

Joseph E. Cole, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(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 it compensated Motor Car Repairmen E. A. Vickery and W. Kiser at their straight time rate instead of their time and one-half rate of pay for the period extending from 9:00 A.M. to 3:30 P.M. on September 9, 1969 (System File SG-6-69/MW-9-69).

(2) Motor Car Repairmen E. A. Vickery and W. Kiser each be allowed the difference between what they should have received at their time and one-half rate and what they received at their straight time rate of pay because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: 1. Claimant Kiser worked continuously from beginning of his regularly assigned work period, commencing 7:00 A.M., Monday, September 8, 1969, until close of his regularly assigned work period 3:30 P.M., on Tuesday, September 9, 1969.

2. Claimant Vickery worked continuously from the beginning of his regularly assigned work period, commencing 7:00 A.M., Monday, September 8, 1969, until 12:00 Midnight, on Tuesday, September 9, 1969.

3. Carrier compensated both Claimants at their straight time rate of pay between the hours of 9:00 A.M. and 3:30 P.M. on Tuesday, September 9, 1969.

4. Organization contends Claimants were entitled to their time and one-half rate of pay between 9:00 A.M. and 3:30 P.M., Tuesday, September 9, 1969, account the continuous service provisions of Rule 28(a) which reads: "*** Employees required to work continuously from one regular work period into another shall be paid therefor at the rate of time and one-half for the first eight (8) overtime hours and thereafter at double time until the beginning of the next regular shift, and thereafter at the rate of time and one-half or double time as the case may be, until relieved."

5. Carrier's assertions and exhibits introduced for the first time in submissions to the Board of an alleged past interpretation and/or application of Rule 28(a) cannot be considered in our determination since there is no definite proof in the record they were discussed during the handling of the claim on the property.

6. Rule 28(a) is directed towards rates of pay when employees are engaged in continuous service until relieved and does not delineate the type of work.

7. Rule 28(a) controls and we sustain the claim.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1972.