

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33843
Docket No. MW-32528
99-3-95-3-433

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(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 Agreement was violated when the Carrier assigned Motor Car Repair Foreman R. Alfaro and/or Motor Car Repairmen R. Sutherland, C. Crenshaw and J. Hastings to perform garage service-man's work (repairing flat tires, changing tires, servicing and fueling equipment and cleaning shop) at the Inland Yard on June 4, 5, 11, 12, 18,19, 25, 26, July 9, 10, 16 and 17, 1994, instead of assigning Garage Serviceman J. Jones to perform said work (System Files GSWE-12-95/TM-5-94, GSWE-12-96/TM-8-94, GSWE-12-99/TM-11-94 and GSWE-13-1/TM-12-94).
2. As a consequence of the violation referred to in part (1) above, Garage Serviceman J. Jones shall be allowed one hundred (100) hours' pay at the garage serviceman's time and one-half rate.”

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.

This is a claim for a total of one hundred (100) hours of overtime pay over a period of twelve days which the Organization asserts was denied Claimant Jones.

To fully understand this dispute it is necessary to review on-property history. Rule 16 of the Agreement lists the various Maintenance of Way seniority Subdepartments and groups within each Subdepartment. This claim involves Group 2 of the Scales and Work Equipment Subdepartment, specifically, the Garage Servicemen and higher-rated Motor Car Repairmen. Those position descriptions, set forth in Rule 4 of the Agreement, read as follows:

Garage Serviceman

"Garage Servicemen's work shall consist of the following in and about their respective shop headquarters or terminal area (as defined below) or any other location at which Garage Servicemen regularly may be assigned in the future: (1) washing and polishing motor vehicles; (2) checking and providing motor cars, motor vehicles and various pieces of equipment serviced and maintained in the Maintenance of Way Department with proper fuel lubricants, tire repairs, air and water, except such refueling or lubrication of critical points as may be necessary for an operator to complete a day's work. Garage Servicemen shall also be assigned to (3) general housekeeping and security duties in and about their respective shop headquarters and at other such job locations as the duties of motor car repairmen and garage servicemen are performed, and (4) may also be assigned to assist the respective mechanics outlined in the foregoing paragraphs. Garage Servicemen shall be required to provide only such mechanic's tools as are agreed upon from time to time by the General Chairman and the Director of Labor Relations."

Motor Car Repairman

"An employee who is capable in and assigned to the inspection and repair of motor cars, motor vehicles and various other machines used in the Maintenance of Way Department shall constitute a Motor Car Repairman."

Sometime prior to this dispute, Carrier and the Organization entered into an Agreement for minimum force requirements of the Garage Servicemen's positions at the Kirk Yard and the Joliet truck garage, located in Gary, Indiana and Joliet, Illinois, respectively. On June 9, 1992, those discussions were memorialized in the following Understanding:

"This confirms our understanding that on and after July 1, 1992, motor car repairmen may perform any of the work of garage servicemen, as set forth in section (e) of Rule 4, provided the Carrier is maintaining four (4) garage servicemen's positions at the Kirk Yard truck garage and one (1) garage servicemen's position at the Joliet truck garage, the number of such positions which existed on June 9, 1992.

Employees holding seniority as garage servicemen as of June 9, 1992 shall retain prior rights to the work of garage servicemen and only those employees may bid on such positions in the future.

In the event any of the present garage servicemen's positions is vacated on or after July 1, 1992, motor car repairmen may continue to perform garage servicemen's work so long as the carrier has bulletined the position for bid by employees with prior rights to such work."

In short, the Agreement "grand-fathered" the five incumbent Garage Servicemen and prospectively allowed a Motor Car Repairman to perform Garage Servicemen's work, provided Carrier maintained the four Garage Servicemen's positions in Gary, Indiana and one in Joliet, Illinois. Those individuals holding Garage Serviceman seniority as of the date of the Agreement retained prior rights to those five jobs and only they could bid on them in the future. As these individuals retired or voluntarily left their Garage Servicemen's positions, their positions would be eliminated by attrition and the work absorbed by Motor Car Repairmen.

During the two years that had elapsed between the June 9, 1992 Agreement and the period of time just prior to the claims giving rise to this dispute, two of the four Garage Serviceman positions thus had been eliminated at the Gary, Indiana, location. On or about June 3, 1994, one of the two remaining Gary Garage Servicemen, A. McCoy relinquished his rights as a Garage Serviceman and returned to the Track Department. During his tenure at Carrier's Gary location, Garage Serviceman McCoy occupied the Friday through Thursday position at the Kirk Yard garage. When Mr. McCoy's request was granted, only one Garage Serviceman position remained at Gary; at that time, occupied by the Claimant.

In accordance with Paragraph 3 of the June 9, 1992 Agreement, Carrier advertised on June 6, 1994, a Motor Car Repairman position at Gary, with regularly assigned hours of 7:30 A.M. to 4:00 P.M., with Wednesday and Thursday as assigned rest days, the same hours and rest days as those of the Garage Serviceman position vacated by Mr. McCoy. Carrier did not receive any bids in response to that posting. In the meantime, pending re-bulletining and permanently filling the position with a Motor Car Repairman, Carrier assigned necessary overtime on several weekends in June-July 1994 to employees in the Motor Car Repairman job classification. The Organization subsequently filed the grievances noted supra maintaining that Carrier had violated Rules 4(f), 11, 16, 32, 36, 51 and 53 and contended that the Claimant, the sole remaining Garage Serviceman, should have been called on his rest days (Saturday and Sunday) to cover no-bid position until such time as it was filled permanently by a Motor Car Repairman.

The primary goal of arbitrators must be to effectuate the intent of the parties. Ordinarily intent can best be ascertained from the plain words used in the Collective Bargaining Agreement. When the language used is clear and explicit, as it is in the July 9, 1992 Agreement, this Board is constrained to give effect to the thought expressed by the words used. Under the plain language of that Agreement, the Garage Serviceman position previously occupied by Mr. McCord was attrited and the vacancy in question was for a no-bid Motor Car Repairman position. Carrier persuasively demonstrated that it was not obligated to use the last remaining Garage Serviceman to cover interim overtime on that vacancy and that it probably would have been subject to righteous claims from Motor Car Repairmen had it done so. We deny the claim due to lack of support in the Agreement.

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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 21st day of December 1999.

