

**Award No. 13818**

**Docket No. MW-14831**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Nathan Engelstein, Referee**

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**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 when it discontinued a motor car repairman's position at Joliet, Illinois, on April 13, 1962 and then created a new position under the same title for the purpose of evading the rules.

(2) The Carrier violated the Agreement when it created a motor car repairman's position with headquarters other than at Joliet, Illinois or Gary, Indiana, on April 16, 1962.

(3) Motor Car Repairman R. E. Griff 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 he performed each day from 6:30 A. M. to 7:30 A. M. and

(b) one (1) hour's pay at his straight time rate for each day he was required to suspend work from 3:00 P. M. to 4:00 P. M. without pay and

(c) pay at his time and one-half rate for the time required in going from headquarters at Joliet, Illinois, to the system extra gang camp cars and for the return trip, each day and

(d) reimbursement be made for all transportation and meal expenses incurred because of the violations referred to in Parts (1) and (2) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to the period of this claim, the claimant, who was the junior Motor Car Repairman on the Joliet

instance, cannot show where the Carrier has violated their agreement. As for Award 1551, no work was removed from under the collective bargaining agreement. This was motor car repairmen's work, and a motor car repairman performed it.

Accordingly, the Carrier submits that there is no merit in the instant claim and it should be denied in its entirety.

(Exhibits not reproduced.)

**OPINION OF BOARD:** By notice dated April 3, 1962, Motor Car Repairman position at Joliet, Illinois with hours from 7:30 A. M. to 4:00 P. M. was discontinued effective Friday, April 13, 1962. On April 6, 1962, Carrier advertised a Motor Car Repairman position with headquarters at System Extra Gang Camp Cars to be established Monday, April 16, 1962, with hours at 6:30 A. M. to 3:00 P. M. Claimant Griff made application for this position, which he was awarded and worked on through Friday, May 25, 1962, on which date this position was abolished and a new Motor Car Repairman position, with headquarters at Joliet, Illinois, was created, effective Monday, May 28, 1962. Mr. Griff was the successful bidder for this position.

Claimant asserts that Carrier violated the Agreement when it discontinued the Motor Car Repairman position at Joliet and created a new position under the same title with headquarters assigned to a floating crew, contending this was done in order to evade the rules. He alleges violation of Rules 5(b), 33 and 40.

In its denial, Carrier argues that Rule 5(b) does not restrict the headquarters of Motor Car Repairmen to either Joliet or Gary. It interprets this rule to mean that a Motor Car Repairman to whom this rule applies, can work at any point in the system, but can acquire seniority either on the Joliet or Gary seniority rosters, not both. In short, it is Carrier's position that Rule 5(b) concerns seniority, and not the establishment of headquarters. Carrier also asserts that the exhibits presented show that previously it had established Motor Car Repairmen positions with an extra gang at South Chicago without protest from Organization. It also maintains that there was no violation of Rule 33 because it did not abolish a position and create a new one in order to avoid the application of the rules. Carrier declares it was exercising its managerial judgment in abolishing the one position and in creating the other.

The concluding provision of Rule 5(b) reads as follows:

" . . . Scales and Work Equipment employees will not be hired at points other than Joliet, Illinois or Gary, Indiana, and such employees on either the Joliet or Gary seniority rosters may be worked at any point on the company's entire system without penalty."

Thus, it is clear from this provision that the Motor Car Repairmen must have headquarters at either Joliet or Gary, even though Carrier is expressly authorized to work these employees at any point on its entire system.

With reference to Carrier's Exhibits to support its position that Rule 5(b) does not place any restriction on headquarters assignments of Motor Car Repairmen and that there had been a past practice of assigning Motor Car Repairmen anywhere in the system, we find that these exhibits cannot be considered, because they were not introduced on the property.

Carrier's purpose in abolishing Motor Car Repairman's position at Joliet and almost immediately thereafter creating a new position with the same title and duties at a point other than Joliet or Gary was to avoid payment of expense under Rule 40, which is a violation of Rule 33.

Rule 40 provides:

"Employees will be reimbursed for cost of meals and lodging incurred while away from their outfit or headquarters by direction of the management, whether off or on their regular assignment."

Rule 33 provides:

"Established positions shall not be discontinued and new ones created under the same or different title covering relatively the same class or kind of work for the purpose of reducing the rates of pay or evading the application of these rules."

In the new position with floating headquarters, Claimant was obliged to assume his own expenses because he was not considered to be away from headquarters.

Under Rule 5(b) the Motor Car Repairman with headquarters at Joliet could have been directed by Carrier to work in another location without returning to his headquarters daily, providing he could return on his rest days with reimbursement by Carrier for round trip transportation, and for meals and lodging expenses while away from headquarters.

Having found the Agreement was violated, we next consider claims for compensation.

Claim as requested in paragraph 3(a) is sustained in view of the fact that the abolished position began at 7:30 A. M. and the newly created position began at 6:30 A. M.

Claim in paragraph 3(b) is denied, since the record does not show that Claimant was required to suspend work from 3:00 P. M. to 4:00 P. M. without pay.

Claim 3(c) is also denied, because the Agreement does not require that Claimant return daily to headquarters and the determination of the time required in travelling to and from headquarters is too conjectural.

Claim 3(d) is sustained only for meal expenses incurred during the period Claimant worked as a Motor Car Repairman on the System Extra Gang.

**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, and Claims are sustained in part and denied in part, in accordance with the above Opinion.

**AWARD**

Claim sustained in accordance with Opinion and Findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1965.