

Award No. 14137

Docket No. MW-15464

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

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, on or about June 15, 16, 22, 23 and July 6, 7, 1963, it assigned or otherwise permitted a Motor Car Repairman to perform Garage Serviceman's work at Gary, Indiana (System Case No. SG-17-63) (Carrier's File WM-25-63).

(2) Garage Serviceman M. Beranek now be allowed twenty-four (24) hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant was regularly assigned to the position of Garage Serviceman at Gary, Indiana, with a work week extending from Monday through Friday (rest days were Saturday and Sunday).

Motor Car Repairman J. J. Sheetz, who performed the work here involved during the assigned hours of his position, was regularly assigned as such at Gary, Indiana, with a work week which included Saturday and Sunday.

The factual situation was partially described in the following quoted excerpt from the letter of claim presentation:

"On or around June 15, 16, 22, 23, 1963, there was no garage service man working in the garage at Gary, Indiana. Hence, Motor Car Repairman J. J. Sheetz worked four (4) hours each day referred to above performing garage service man's work, such as servicing and refueling equipment, repairing tires and parking trucks. Mr. Sheetz also performed the same type of garage service man's work for five (5) hours on July 6, and three (3) hours on July 7, 1963. This, we believe, constitutes a violation of our current agreement, and particularly, the classification rules."

Each of the dates set forth in the aforequoted excerpt is either a Saturday or a Sunday.

There is no merit in the Organization's position and the instant claim; accordingly, they should be denied by the Board.

OPINION OF BOARD: This claim originated at the Gary Motor Car repair shop as a result of an alleged violation by the Carrier in assigning a Motor Car Repairman to perform Garage Serviceman's work. The work which was alleged to have been performed on the dates enumerated in the claim occurred either on a Saturday or Sunday.

The Claimant is the regularly assigned Garage Serviceman with a workweek from Monday through Friday. The Motor Car Repairman, who allegedly performed the work in question, has a regularly assigned workweek which includes Saturday and Sunday.

On the dates in question, a vacancy existed in the position of Garage Serviceman due to the incumbent having bid off the position to another bulletined assignment. Said vacancy was subsequently filled on July 12, 1963. However, the Carrier conceded that the work was performed by the Repairman on the enumerated dates, as indicated in the following quote:

"During the vacancy on this position, it became necessary at times to have certain garage serviceman's work performed, but due to the fact that this position was vacant, a motor car repairman was assigned to perform said duties."

It is also admitted that this position was neither abolished nor blanked.

Two rules are in issue in this dispute, namely, Rule 28(b) and Rule 56 III (e), both of which are hereinafter quoted:

"RULE 28.

(b) Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employe."

"MEMORANDUM OF AGREEMENT EXECUTED AT CHICAGO, ILLINOIS, THIS 1ST DAY OF DECEMBER, 1960, BETWEEN THE ELGIN, JOLIET AND EASTERN RAILWAY COMPANY AND THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES.

It is agreed between the parties hereto that Rule 56 III (e) is hereby abrogated in its entirety and the following substituted therefor:

'56 III (e)

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 such other 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 Vice President-Personnel.

NOTE: Terminal area is defined as the respective yard limits of East Joliet Yard, Kirk Yard, the Gary Mill Division and any other yard at which a Garage Serviceman is in the future regularly employed.'

BROTHERHOOD OF
MAINTENANCE OF
WAY EMPLOYEES

By /s/ D. L. Woods
General Chairman

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY

By /s/ Paul H. Verd
Vice President-Personnel"

It is recognized that the Repairman was neither an extra nor unassigned employe within the intent of Rule 28 (b). Therefore, within the context of this rule, the regular employe, the Claimant herein, was entitled to be used to perform said work.

Furthermore, under the provisions of Rule 56 III (e), an operator is permitted to refuel or lubricate critical points as may be necessary for him to complete a day's work. Here, again, the work performed on the various dates in question did not involve the exception contemplated in the aforementioned rule.

Accordingly, the Board finds that Rule 28 (b) of the effective Agreement was violated.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February 1966.