

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, 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 it discontinued positions of Welder and of Welder Helper at Gary, Indiana on April 30, 1962 and then created new positions under the same titles for the purpose and with the effect of evading the application of rules.

(2) Welder R. Lazano and Welder Helper B. Papageorge each be allowed

(a) Eight (8) hours' pay at his straight time rate for each Monday and Tuesday of his regular assignment that he is not permitted to work,

and

(b) The difference between what he was paid at his straight time rate and what he should have been paid at the time and one-half rate for the work performed on his regular assigned rest days (Saturday and Sunday) because of the violation referred to in Part (1) of this claim. (System Case Nos. TG-10-62 - VM-13-62.)

(3) Welder C. Vorgias and Welder Helper R. Jordan now be allowed pay at their respective time and one-half rates for the exact amount of time worked on Saturdays and Sundays (rest days) by the junior employes referred to in Part (2) of this claim. (System Case No. TG-10-62-A - VM-14-62.)

EMPLOYES' STATEMENT OF FACTS: Prior to April 30, 1962, Welder R. Lazano and Welder Helper B. Papageorge were regularly assigned to their respective positions with the System Welding Gang headquartered at Gary, Indiana, with a work week extending from Monday through Friday (Saturday and Sunday were rest days). Their assigned hours were from 7:30 A. M. to 4:00 P. M., including a thirty (30) minute meal period.

INVOLVED RULES

The applicable BMW Schedule was revised and re-issued effective August 1, 1952, and it is on file at the Board. The previous schedule was dated effective December 1, 1945.

The Carrier and the Organization are parties to the March 19, 1949 National 40 Hour Work Week Agreement and we are parties to Article V of the August 21, 1954 National Agreement.

When the Organization's August 1, 1952 Schedule was revised, the National 40-Hour Work Week Agreement was incorporated into its body. The provisions of the National 40-Hour Work Week Agreement presently are set forth in Rules 22, 25, 27 and 28 of the August 1, 1952 bound edition of the Organization's Schedule.

The Board may also desire to examine the provisions of Rules 29(a), 30, 33, 57 and 59(c).

(Exhibits not reproduced.)

OPINION OF BOARD: The application of the Agreement to the events involved in this case at bottom turn on the same arguments as in the case involved in our Award No. 17031, except insofar as the procedural argument of Carrier is involved. In that case we found that the claims arose out of the same events and, on the merits, involved the same basis contract applications as in the case involved in our Award No. 17030 which we dismissed on procedural grounds without consideration of the merits. In this case Carrier makes the same procedural argument, but we find that, while the underlying contract questions on the merits are the same, the claims herein do not arise from the same events as in the earlier case. Thus we will consider this case on its merits, and we will follow our reasoning in Award No. 17031 which for other reasons we disposed of on its merits.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 26th day of March, 1969.

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