

Award No. 17034
Docket No. MW-14930

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 the position of Motor Car Repairman at Gary, Indiana on June 6, 1962 and then created a new position under the same title for the purpose and with the effect of evading the application of rules. (System Case No. SG-6-62 - WM-14-62.)

(2) The Carrier further violated the Agreement when it established and filled a position of Garage Serviceman at Gary, Indiana, with assigned hours from 7:00 A. M. to 3:30 P. M., Wednesday through Sunday, for the purpose of evading the application of the overtime rules. (System Case No. SG-6-62 - WM-14-62.)

(3) Motor Car Repairman J. Scheetz 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 performed on his assigned rest days,

and

(b) eight (8) hours' pay at the straight time rate for each Monday and each Tuesday of his regular assignment that he was required to suspend work from 7:30 A. M. to 4:00 P. M. without pay because of the violation referred to in Part (1) of this claim.

(4) The senior available Motor Car Repairman now be allowed pay at his time and one-half rate for the exact amount of time worked by the junior employe referred to in Part (3) of this claim on Saturdays and Sundays.

(5) Garage Serviceman F. Rosario 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 performed on his assigned rest days,

and

(b) eight (8) hours' pay at the straight time rate for each Monday and each Tuesday of his regular assignment that he was required to suspend work without pay because of the violation referred to in Part (2) of this claim.

(6) The senior available Garage Serviceman now be allowed pay at his time and one-half rate for the exact amount of time worked by the junior employee referred to in Part (5) of this claim on Saturdays and Sundays."

EMPLOYEES' STATEMENT OF FACTS: Prior to the close of work June 6, 1962, Claimant J. Scheetz was regularly assigned to the position of Motor Car Repairman at Gary, Indiana, with a work week extending from Monday through Friday (Saturday and Sunday were rest days). His assigned hours were from 7:30 A.M. to 4:00 P.M., including a thirty (30) minute meal period.

Effective at the close of work on June 6, 1962, the Carrier discontinued the claimant's position and immediately concurrent therewith, without benefit of negotiation with or the concurrence of the employees' authorized representatives, created a new identical position at the same location with the same assigned hours but with a work week extending from Wednesday through Sunday (Monday and Tuesday were rest days). Thereafter, Claimant Scheetz was to work during this newly established work week.

Effective June 7, 1962, the Carrier, without benefit of negotiation with or the concurrence of the employees' authorized representatives, established a position of Garage Serviceman, to which Claimant F. Rosario was assigned, at Gary, Indiana, with a work week extending from Wednesday through Sunday (Monday and Tuesday were rest days.) The assigned hours of this newly established positions were from 7:00 A.M. to 3:30 P.M., including a thirty (30) minute meal period.

Prior to June 7, 1962, all Group 2 Scale and Work Equipment Sub-department positions were assigned exclusively to a Monday through Friday work week. In emergencies, the employees assigned to such positions had been called and used to perform overtime service on rest days (Saturday and Sunday) in accordance with Agreement rules.

The senior Motor Car Repairman and the senior Garage Serviceman were available and qualified to perform the rest day overtime work of their respective positions but were not called and notified to do so.

The Agreement in effect between the two parties to this dispute as revised and reissued August 1, 1952, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

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 basic 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.