

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (United Steelworkers of America,
(A. F. of L. - C. I. O.
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(The Lake Terminal Railroad Company

Dispute: Claim of Employees:

- (1) That under the controlling Agreement dated December 1, 1974, the Carrier violated and continues to violate Rule 24(a) when it refused and refuses to abide by the plain and unambiguous language of the Rule.
- (2) That accordingly, the Carrier be ordered to compensate the following employees one hour at the time and half rate as penalty for these violations, in addition to all other earnings, for the dates shown:

May 21, 1975: A. Gay; J. Strehle; J. Giancaterino; R. Linkowicz.

May 22, 1975: J. Strehle; S. Toth; J. Giancaterino; W. Anderson.

May 30, 1975: J. Strehle; D. Burgos; J. Nickolette; J. Cruz.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

The Claimants worked during their usual lunch periods, due to the necessity of assisting regarding derailments.

Rule 3, Section 1(a) specifies that eight (8) consecutive hours "... (including an allowance of twenty (20) minutes for lunch between four and six hours after starting time)..." shall constitute a work day. The Carrier resists the claims because it afforded the employees a lunch period during the contractually specified times, although not during the times which were normally observed by these employees.

The Organization has noted that most position bulletins state a specific lunch period, and it invites our attention to Rule 24(a):

"If an emergency arises where a man has to work his lunch period, he will be paid for his lunch period at the rate of time and one-half plus one-half hour for lunch, as soon as the emergency is cleared."

The argument as to whether or not a position must be rebulletined if a normal lunch period is altered on a regular basis need not be resolved in order to decide this dispute. Similarly, the arguments dealing with prior agreement obligations and asserted prior practices do not control because the present agreement requirements are clear. Award 2092, cited by Carrier, did not consider this concept, and does not control.

Rule 3, Section 1(a) permits certain latitude in establishing the time frames for the 20-minute lunch periods for various employees. But, we read the rule as establishing basic work day requirements. The record before us supports the conclusion that Carrier recognizes that once the meal period is established, there is a basic integrity to the allotted time.

Rule 24(a) speaks in terms of an individual employee's lunch period. When it refers to a man working his lunch period, we feel that it must refer to the specific 20-minute period which has been previously established for him; but it does not convey the message that Carrier may "rearrange" a lunch period to avoid the rule. Claimants here worked during their lunch periods, due to an emergency, and thus, are entitled to time and one-half payment for the lunch periods. The fact the emergency may have cleared, and an employee may have received a one-half hour lunch period during the two-hour time span does not alter that result.

A W A R D

Claim sustained, as stated in Findings, above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of March, 1977.