

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12981
Docket No. 12811
96-2-93-2-145

The Second Division consisted of the regular members and in addition Referee Robert E. Peterson when award was rendered.

(International Association of Machinists
(and Aerospace Workers
PARTIES TO DISPUTE: (
(Alton & Southern Railway Company

STATEMENT OF CLAIM:

"1. That Alton & Southern Railway violated Rules 3 and 4 of the controlling Agreement dated January 29, 1947, when they arbitrarily denied Machinist L. White the right to finish his shift on overtime assignment on October 13, 1992, Alton & Southern Shop, East St. Louis and refused him meals.

2. That, accordingly, the Alton & Southern Railway be ordered to compensate Machinist L. White four (4) hours wages at the overtime rate \$87.66, 30 minutes at overtime rate time and one-half (\$10.96) being denied to go to meal and 20 minutes at overtime rate time and one-half (\$7.31) being denied meal after four (4) hours in second work assignment."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On October 13, 1992, the Claimant worked his regular assignment and was called upon, together with another Machinist, to work overtime in order to make repairs to a locomotive.

A dispute exists as to what the Claimant was told by his Foreman relative to the overtime work. The diverse contentions of the parties are based upon assertion as to what was said rather than the presentation of a statement of pertinent facts from the individuals who had the disputed conversation. Thus, any decision the Board might make concerning this particular matter would have to be based upon speculation and conjecture, or something we will not do.

Moreover, as concerns the contention that the Claimant was deprived of a right to complete his assignment and thereby entitled to an additional four hours overtime pay, whether the Claimant was arbitrarily relieved of the overtime work in a mistaken belief that he was proscribed from performing work beyond a certain time pursuant to the Hours of Service Law, or he was told that he would only work four hours, is irrelevant. The Claimant worked four hours overtime. He was properly compensated for all such work time. No Schedule Rule or Agreement has been cited in support of an employee having a demand right to overtime in eight hour segments. Accordingly, it may not be held that the Claimant suffered a contractual loss of compensation.

Turning to that part of the dispute whereby it is claimed that the Claimant was required to work continuously from 12:20 P.M. to 7:00 P.M. without being permitted to go to meals or allowed payment in lieu thereof, and, further, denied a meal period after four hours overtime work, in violation of Rule 3 and Rule 4(b) of the controlling Agreement.

Rule 3, in part here pertinent, reads as follows:

"[E]ach shift shall consist of eight (8) consecutive hours including an allowance of twenty minutes for lunch within the limits of the fourth and fifth hours. When service requirements will not permit the taking of the lunch period within the fourth and fifth hours as per this rule, a penalty time of twenty (20) minutes at the pro rata rate will be allowed and the employee will be allowed to procure lunch without loss as soon thereafter as possible."

Rule 4(b) reads:

"Employees shall not be required to render service for more than two (2) hours immediately following and continuous with regular work day hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service and will be paid up to thirty (30) minutes."

As with the overtime work itself, there is a dispute as to what was said between the Claimant and his Foreman relative to meal periods. In addition the Carrier argues that since the Claimant did not show on his daily time report that he was seeking payment for meal periods, or, basically, did not personally claim any of the violations alleged, that the Organization did not have the right to thereafter file a claim about such matter for the benefit of the Claimant.

The Board finds no merit in the contention that the Organization may not seek to enforce collectively bargained rules and agreements by the filing of claims on behalf of employees whom it represents. That an employee may not be aware of the full intent and meaning of an agreement rule when a daily time report is submitted, as appears to be the case in the instant dispute, may not be held to foreclose an employee, or the Organization on behalf of such individual, from thereafter protesting an alleged violation of rules. We say this especially in view of the record having failed to show past support for such an argument or that the claim was presented and handled in other than a manner which governs the timely and orderly progression of claims.

The Board does find, however, that Rule 3 has no application whatsoever to the instant dispute. Rule 3 pertains to an eight consecutive hour shift. The Claimant was assigned to the 7:00 A.M. to 3:00 P.M. shift. Nothing of record indicates that the Claimant was not allowed a prescribed 20-minute lunch period during his regular shift. Actually, the claim itself, in making reference to the Claimant having continuously worked from 12:20 P.M. to 7:00 P.M., tends to suggest that the Claimant had a 20-minute lunch period during his eight-hour shift.

The Board also finds no Agreement support in Rule 3 for that portion of the claim whereby it is asserted that the Claimant is entitled to twenty minutes at the overtime rate of pay account having worked more than four hours in a second work assignment of the day. There is no clear showing of Agreement language or established past practice in support of such a claim. It is also evident that the Claimant did not work two separate eight-hour shifts. He was assigned to but one shift and worked overtime on such shift. Further, the Claimant did not work "more" than four hours overtime. He worked but four hours overtime. This portion of the claim will therefore be denied.

Lastly, as concerns Rule 4(b). There is some merit in the argument that employees have a responsibility to be in contact with their supervisors about the time they are to be relieved for the purpose of taking a meal period. However, the Board believes that the Carrier was aware in the instant case that the Claimant had not requested a meal period and had in fact worked through the two-hour period immediately following and continuous with the regular work day. That the Claimant did not request time off for a meal, or payment in lieu thereof on his daily time report, may not therefore be held to have relieved the Carrier of an obligation to provide payment for such a meal period once a claim was made in a timely manner. Under the circumstances, that portion of the claim which asks for payment of such meal period pursuant to Rule 4(b) will be sustained.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 2nd day of February 1996.