

Award No. 876

Docket No. 780

2-T&P-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee H. B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That the carrier is violating Rule 1 (d) by not allowing the twenty minute lunch period to seven day running repair forces where three shifts are employed.

(b) That (14) fourteen carmen and (5) five carmen helpers now employed on the first shift on the repair track at Texarkana, be compensated for one hour at straight time rate for each and every day from June 8, 1941, until adjustment is made.

EMPLOYES' STATEMENT OF FACTS: That at Texarkana, the following shifts are employed in the car department.

Shift No. 1, on the repair track:

	Starting Time	Quitting Time	
1-14 Carmen	7:30 A.M.	4:30 P.M.	one hour off for lunch
5 " Helpers	7:30 A.M.	4:30 P.M.	one hour off for lunch
2- 1 Carman	4:30 P.M.	12:30 A.M.	20 minute lunch period.
2 " Helpers	4:30 P.M.	12:30 A.M.	20 minute lunch period.

Train yard inspectors and helpers:

1-5 Inspectors	7:30 A.M.	3:30 P.M.	20 minute lunch period.
2 Helpers	7:30 A.M.	3:30 P.M.	20 minute lunch period.
2-5 Car Inspectors	3:30 P.M.	11:30 P.M.	20 minute lunch period.
2 Helpers	3:30 P.M.	11:30 P.M.	20 minute lunch period.
3-8 Car Inspectors	11:30 P.M.	7:30 A.M.	20 minute lunch period.
2 Helpers	11:30 P.M.	7:30 A.M.	20 minute lunch period.

The fourteen carmen and five helpers assigned on the repair track are the only employees that are not receiving the twenty minute lunch period in Texarkana.

POSITION OF EMPLOYES: That the fourteen carmen and five carmen helpers are entitled to the twenty minute lunch period, the same as the second shift carmen on the repair track and the yard forces due to the fact that both the repair track forces and the yard forces are worked back and forth from train yard to repair track. Rule 11 (d) reads as follows:

to the train yard and work them there during the entire eight hour spread on the first shift inspectors' work the repair track forces would likewise receive twenty minute lunch with pay. However this is not the case, the repair track forces on the first shift are only used in the train yard in emergency and only for a few minutes from time to time and they could not be classed as being assigned jointly to the train yard and repair track.

It is understood by the employes that the carmen working on repair track first shift at Texarkana are assigned to the repair track and not the train yard. They report and stop work on the repair track.

The carrier feels it has proven that:

1. Rule 1 paragraph (d) is not being violated at Texarkana.
2. That where three shifts are employed they are allowed the twenty minute lunch period with pay.
3. The exception to Rule 1 covers the case at hand and the employes on repair track, first shift, Texarkana are not entitled to twenty minute lunch period with pay.

In conclusion, would call attention to the fact that in handling this case with the carrier the organization based the claim, as set out in paragraph (b) submitted to your Board on the part of fourteen carmen for one hour at pro rata rates, on Article 1 (d) which is quoted in our statement of facts. That rule does not support the claim for one hour at pro rata rates as claim for time not worked, nor is there any rule in the agreement that would do so.

Rule 3 (a), reading:

"Employes required to work during or any part of the lunch period, shall receive pay for the length of the lunch period regularly taken at point employed at straight time and will be allowed necessary time to procure lunch, not to exceed thirty (30) minutes without loss of time."

is the only rule in the agreement covering pay during lunch hour and that is only where they are required to work during or any part of the lunch period.

It is an agreed fact that the claimants in this case were not required to and did not work during any part of the lunch period, as it is not claimed that they did.

In this respect, would refer to the findings of the First Division of this Board in its Award 6641, the Board being augmented by Referee Riley at the time the award was issued, wherein the Board ruled, in part:

"This division is without jurisdiction to award payment without a rule or agreement."

There being neither agreement nor rule that would support this case is should be denied in line with the findings above referred to.

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.

The parties to said dispute were given due notice of hearing thereon.

The record fails to establish that three shifts are worked on the repair track at Texarkana. No violation of Rule 1 (d) is shown.

AWARD

(a) Claim denied.

(b) Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of November, 1942.