Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD SECOND DIVISION

Award No. 10833
Docket No. 10400
2-HB&T-CM-'86

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Houston Belt and Terminal Railway Company

Dispute: Claim of Employes:

1. That the Houston Belt & Terminal Railroad Company violated Rule 6(b) of Agreement of September 1, 1949, February 8, 1983 when they refused to allow Carman D. Searcy pay for lunch period.

2. That the Houston Belt & Terminal Railroad Company be ordered to compensate Carman D. Searcy in the amount of thirty (30) minutes at the pro rata rate account of this violation.

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 employes 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 Claimant, Carman D. Searcy, was, on February 8, 1983, working at the Rip Track with assigned hours of 7:00 A.M. to 3:20 P.M. with a 12 noon meal period of twenty minutes. At 3:00 P.M., the Claimant was called to rerail five freight cars. This work was completed at 6:00 P.M. The Claimant added thirty minutes to his time card, and the Carrier refused payment.

The Organization relies upon Rule 6, Paragraph (b), which states in pertinent part:

"Employees shall not be required to render service more than two (2) hours after regular work hours without being permitted to go to meals."

The Carrier contends the Claimant, when told he would be needed for overtime, was also told to go ahead and eat. The Carrier indicated it would pay for the meal and that Hulcher should be at Old Yard by 3:45 P.M. The Organization further supports its position by referring to an understanding reached in conference on October 23, 1981. This understanding indicates that:

> "It is the individual's option when released whether he wants to eat or proceed on home."

The understanding agreed to a thirty minute arbitrary for the meal period. In its Submission, the Carrier disputes the authenticity of the referred to Agreement, but made no attempt to rebut the Organization's assertions related thereto in on-the-property handling. The issue of following direct orders is not before the Board. The facts establish the Claimant was told to eat at 3:00 P.M. He still had twenty minutes to complete his assigned hours. He then had to proceed to the South Yard. Rule 6, Paragraph (b) deals exclusively with service rendered after regular working hours. Clearly, it did not become operative at 3:00 P.M. When Rule 6, Paragraph (b) is coupled with the understanding referred to in the Organization's Letter of Claim dated February 28, 1983, establishing a thirty minute arbitrary, the Carrier's position cannot be upheld.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1986.