

CORRECTED

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13820

Docket No. 13703

05-2-03-2-44

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

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen Division of TCU
(The Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- "1. That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 30, when they failed to provide meals or allowed time for meals, for the Waterville, ME Wreck Crew, during a derailment on August 28, 2001.**
- 2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate the seven (7) Carmen Wreckers, identified in our initial claim, eight (8) hours pay at the straight time rate, as a remedy for not providing timely and proper meals as provided in our Agreement."**

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 were given due notice of hearing thereon.

When this dispute arose, Claimants were working their regular assigned jobs at the Waterville Car Shop (7:00 a.m. to 3:00 p.m. shifts). The last meal during their shift on August 28, 2001 was their regularly scheduled lunch between noon and 12:20 p.m.

At approximately 2:30 p.m., the Waterville wreck crew was instructed to prepare the relief train to travel to East Newport, Maine (approximately 30 miles) to clear a derailment. The crew included (but was not limited to) a cook (R. Delano) and ground men (L. McCommie, T. Witham, B. Bertelsen, J. Real, K. Dyer and T. Locke, Sr.).

At approximately 7:00 p.m., four members of the wreck crew were allowed to use a Carrier vehicle to leave the wreck site to get a meal at a restaurant. At approximately 11:00 p.m., two other members of the wreck crew requested and received permission to get a meal. The cook, Delano, was in the diner, which was on a siding at a distance from the wreck site. According to the Organization, Delano was without any food or transportation and had only water and did not get a meal until the wreck crew returned to Waterville the next morning.

At 5:00 a.m., on August 29, 2001, Manager of Motive Power P. M. Slaney brought coffee and donuts to the wreck site.

At approximately 7:30 to 8:00 a.m., and after the derailment site had been cleared, Car Manager Berkshire drove the wreck crew back to Waterville. Some of the crew members requested to stop to get breakfast. According to the Organization, Berkshire denied the request advising the crew there was not enough time.

Various rules governing meal periods provide as follows:

“28.2 Employees will not be required to work more than two (2) hours beyond and continuous with regular bulletin hours without being permitted a second meal period, which will not terminate continuous time and will be paid for up to thirty (30) minutes. Employees required to work continuous with and subsequent to

their regular shift for a period of 8 hours or more will be allowed a second meal period, and if 16 hours or more, a third meal period, under the same conditions. All meal period payments/allowances in this paragraph 28.2 will be done only if employees are required to return to service thereafter.

* * *

30.6 Meals and lodging if necessary, will be provided for wreck crew while on duty in wrecking service. A meal period of up to 30 minutes will be allowed, without loss of pay, to employees within six hours after reporting for wreck service. Where meals are not provided, actual and necessary expenses will be allowed.

* * *

31.4 Meals will be provided for by the Carrier, if possible, otherwise actual necessary expenses will be allowed. The allowance for on-duty meals under this rule will be considered working time and will be paid for up to thirty (30) minutes each period."

* * *

Rule 30.6 governs employees in wrecking service — and that rule is clear. "A meal period of up to 30 minutes will be allowed, without loss of pay, to employees within six hours after reporting for wreck service" [emphasis added]. That did not completely happen here. The meal period obligation was met for the four wreck crew members who were allowed to go to eat at 7:00 p.m. — i.e., "within six hours after reporting for wreck service". However, that meal period obligation was not met with respect to the two members who were not permitted to leave until 11:00 p.m., since that release occurred more than six hours after those two individuals reported for wreck service. The Carrier's defense is that supervisors overlooked scheduling some meal periods. The Carrier does not offer any evidence that operating conditions prevented an opportunity for meals. Thereafter, the obligation was not met at all for any of the employees involved in this dispute. With respect to the cook, he received no meal periods the entire time the wreck crew was in service.

Reading the rules together, at a minimum, the employees in wrecking service were entitled to a meal period during each eight hour period to commence within six hours after reporting for wreck service. Some of the employees (the four who were released at 7:00 p.m.) received part of that benefit in a timely fashion. The obligation was not met for the rest.

Bringing coffee and donuts to the wreck site did not meet the Carrier's obligation to provide meals. And, refusing to stop on the way back to Waterville after the wreck crew completed work because "there was not enough time" clearly violated the obligation. The letter dated December 31, 1998 (Employees Exhibit A-10), which the Carrier does not dispute, clearly requires a more substantial benefit.

The claim therefore has merit.

However, for a remedy, we reject the Organization's request to compensate the employees eight hours pay at the straight time rate. Rule 30.6 cited by the Organization provides for the remedy — "up to 30 minutes will be allowed, without loss of pay". That language calls for a make whole remedy. Therefore, each employee — depending on their individual circumstances concerning how many meal periods they were individually allowed — shall receive 30 minutes' pay (at the contact rate they were being compensated at the time) for each meal period not allowed within each eight hour period after they reported for and worked wreck service on the dates in question. Because certain employees were allowed meal periods, the Carrier shall receive credit for meal periods allowed for the four employees who were released at 7:00 p.m. and the two released at 11:00 p.m.

Simply put, the wreck crew members were entitled to meal periods every eight hours commencing six hours after they reported for wrecking service. However, these employees received that entitlement in varying degrees. The wreck crew members involved in this dispute shall therefore be made whole for those lost meal periods as provided above, depending upon their individual circumstances.

AWARD

Claim sustained in accordance with the Findings.

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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 8th day of July 2005.