

Award No. 1597
Docket No. CL-1623

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that the Warehouse Foreman at Corpus Christi be paid one hour's overtime at the rate of time and one-half for the entire period of time his meal period was assigned in violation of the agreement."

JOINT STATEMENT OF FACTS: "On December 7, 1940, and prior thereto, the Warehouse Foreman at Corpus Christi, Texas was assigned to work from 6:00 A. M. to 3:00 P. M. with a meal period from 12:00 Noon to 1:00 P. M.

"Effective December 8, 1940 the meal period was changed to 11:00 A. M. to 12:00 Noon."

POSITION OF EMPLOYES: "Rule 41 of our current rules agreement reads as follows:

'(a) Except for regular operations requiring continuous hours, all positions will have an assigned meal period, which will be allowed between the ending of the fourth and the beginning of the seventh hour after starting time. Employees required to work any part of the assigned meal period will be paid for the actual time worked at the rate of time and one-half and will be allowed not less than twenty (20) minutes without deduction in pay in which to eat.

'(b) Employees required to work overtime continuous with regular assignment will be allowed a second meal period without deduction in pay not later than the end of the sixth hour after the end of the first meal period.'

"The above rule is plain, definite and not subject to misunderstanding.

"On November 25, 1940 we filed claim because of the meal period being assigned in violation of Rule 41. (See Exhibit A.) The carrier corrected the violation, but refuses to pay the claim.

"You will observe that the meal period must be 'between the ending of the fourth and the beginning of the seventh hour after starting time.' That

request from the General Chairman that the meal period be designated between the ending of the fourth and the beginning of the seventh hour after starting time, arrangements were made to comply with his request, therefore, under the circumstances connected with this case, the Carrier considers that the claim is not justified."

OPINION OF BOARD: The facts in this case are not in dispute. They were jointly certified to the Board by the parties. This record shows that prior to and on December 7, 1940 the position of warehouse foreman at Corpus Christi, Texas, assigned hours from 6:00 A. M. to 3:00 P. M., was given a meal period between the hours of twelve noon and 1:00 P. M. and that effective December 8, 1940 the meal period was changed to 11:00 A. M. to twelve noon.

Carrier admits that there is a violation of Rule 41-A of the current agreement in that the meal period was not allowed between the ending of the fourth and the beginning of the seventh hour after starting work at 6:00 A. M. Carrier, however, argues that because this violation was not called to its attention and that as it corrected the violation within what it designates as a reasonable time after they were advised, carrier should not now be required to compensate the warehouse foreman one additional hour at over-time rates by reason of the violation.

This Board cannot agree with the contention of the carrier. It is the duty of the carrier in the first instance to apply correctly the agreement to its employes and it is the duty of the employes to follow the instructions and assignments given them by the carrier thereunder.

In this case it is shown that the employe was required to work from 6:00 A. M. to twelve noon and that Rule 41-A was violated by the carrier. However, under the particular facts in this case, the Board is not sufficiently satisfied to order compensation for the entire period but does hold that the current agreement was violated and that the employe should now be compensated therefor at over-time rate as provided in the current agreement from November 23, 1940 to December 8, 1940.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier violated the current agreement and from the period November 23, 1940 to December 8, 1940 the claim will be allowed.

AWARD

Claim sustained for the period from November 23, 1940 to December 8, 1940.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1941.