

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**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) Carrier is required by Rule 29 to allow employees, who are assigned to work 8 consecutive hours, twenty (20) minutes in which to eat without deduction in pay, or make appropriate pay allowance in lieu thereof; and that
- (2) D. L. Bartee, Line Desk Clerk, Lake Charles, be allowed pro rata payment for twenty (20) minutes on December 1, 3, 4, 5, 8 and 10, 1942 in lieu of time not allowed in which to eat as required by Rule 29.

EMPLOYEES' STATEMENT OF FACTS: D. L. Bartee is one of three Line Desk Clerks employed for regular operations requiring continuous hours in the Lake Charles Yard Office. He is regularly assigned to work from 12:00 midnight to 8:00 A. M., 8 consecutive hours as per Rule 29. Rule 29 reading:

"RULE 29. CONTINUOUS WORK WITHOUT MEAL PERIOD.

For regular operations requiring continuous hours, eight (8) consecutive hours without the meal period may be assigned as constituting a day's work, in which case not to exceed twenty (20) minutes shall be allowed in which to eat without deduction in pay, when the nature of the work permits."

On December 1, 3, 4, 5, 8 and 10, 1942, service requirements in connection with train movements deprived Bartee of the opportunity to forego the performance of his duties for twenty (20) minutes for the purpose of eating. Specifically, there was no time within his assigned hours when the nature of the work permitted him to take his minutes on those dates. He was not allowed twenty (20) minutes in which to eat on the dates named, nor was he allowed compensation in lieu thereof. His claims for payment in lieu of twenty (20) minutes not allowed in which to eat were declined by Superintendent Glover in his letter of December 17th, 1942, quoted in full below:

"Lafayette, La., December 17, 1942

**Lake Charles Yard—Overtime Claims—
D. L. Bartee, Line Desk Clerk:**

Mr. R. E. Stoker,
Lake Charles, La.

We received in today's mail Form L-8820-B, dated December 1, 3, 4, 5, 8 and 10, each being a claim for 20 minutes overtime by Line Desk Clerk Bartee account working meal period.

General Chairman Harper refers to allowances to be made to a yard fireman. The Firemen's Agreement contains the following provision:

"Yard crews will not be required to work longer than six (6) hours without being allowed twenty (20) minutes for lunch, with no deduction in pay or time therefor.

"NOTE: If the lunch time is not completed between the 4½ and sixth hour after starting work, firemen will be paid twenty (20) minutes pro rata in addition to the eight (8) hours."

This rule specifically provides that if the lunch time is not completed between the 4½ and 6th hour after starting work, firemen will be paid twenty minutes pro rata in addition to the eight hours. The point the carrier is endeavoring to make is that where payment is required, it is specifically provided for by agreement. The distinction with respect to the requirement of paying for meal time is obvious in reading Rules 28 and 29, one of which clearly states that if the meal period is not afforded within the agreed-upon time limit and is worked it shall be paid for at the pro rata rate. Under the Telegraphers' Agreement, on a shift of eight consecutive hours, no allowance is made for meals. In the Clerks' Agreement provision is made that not to exceed twenty minutes shall be allowed in which to eat without deduction in pay, when the work permits. There is no provision whatever made for paying twenty minutes pro rata when the nature of the work does not permit or the employee, in his own discretion, decides not to eat his lunch when the nature of the work does permit it.

As to how, when and where the meal is to be taken, the following from the Opinion of the Board in Award 2446 of this Division is of interest:

"The rules do not require that the meal period must be afforded off the property, or off the train, or on a train which is not in motion; and the fact that the time was spent on a moving train does not in itself show that the meal time was not afforded. The employee's time on the train was not taken up by work so he had no opportunity to eat. On the contrary, the record shows that no work was required of him which would interfere with his freedom to use the hour for meal purposes."

In discussing this case in conference, reference was made to Award 1590 of this Division. In that case Rule 40, as quoted in the Position of the Employees, provides that the twenty minutes shall be allowed between the end of the fourth and sixth hour after starting time, with due regard for the requirements of the position. There is no such provision in Rule 29 of the Clerks' Agreement in effect on these lines. Our rule simply provides that they will be allowed twenty minutes in which to eat without deduction in pay when the nature of the work permits. The claim in that case was that Chief Yard Clerk should be paid one hour overtime until he was assigned eight consecutive hours without a meal period and it was denied.

There is no rule in the current agreement that provides for payment claimed in this case.

CONCLUSION: The carrier has shown that the claim has not been handled in the usual manner, as required by the amended Railway Labor Act and the rules of the agreement and should therefore be dismissed. Without prejudice to its position in that respect, the carrier has also conclusively established the fact that the alleged claim is entirely without merit and if not dismissed in toto, should be denied.

OPINION OF BOARD: Carrier raises a jurisdictional question but in its final submission to the Board this is waived and the Carrier states:

"Carrier will accept statement of the Brotherhood that Clerk Bartee made his claim for 20 minutes overtime on Form L-8820-B for each of the dates specified, and that such claims were declined, and waive jurisdictional objections contained in its original ex parte submission."

The sole question now before the Board pertains to the Interpretation and application of Rule 29, which reads:

"For regular operations requiring continuous hours, eight (8) consecutive hours without the meal period may be assigned as constituting a day's work, in which case not to exceed twenty (20) minutes shall be allowed in which to eat, without deduction in pay, when the nature of the work permits."

There is no dispute in the facts. Clerk Bartee was assigned under Rule 29 to a position requiring continuous operation, with assigned hours 12:00 midnight to 8:00 A. M., 8 consecutive hours without meal period.

It is the contention of the Carrier that since Rule 29 did not contain a provision to receive additional compensation in the event he was not afforded 20 minutes in which to eat at some period between 12:00 midnight and 8:00 A. M. the claim cannot be allowed. With this contention we do not agree. The rule clearly provides for an allowance of 20 minutes. It is contained in the Contract between the Carrier and Employees. It is a contract right resulting from the negotiations of the parties. Where an employee sustains a loss by reason of a violation of the agreement, he must be compensated for such loss, even though no specific penalty is imposed by the rule violated. To hold otherwise would mean that agreements could be disregarded at any time. If agreements are to be effective, the guilty party violating the contract must be penalized. In this case, the Contract gave the Employee 20 minutes in which to eat his lunch. He, being deprived of this by the Carrier, would be entitled to compensation for the 20 minutes given to him by the Contract, which he did not receive.

The second proposition that the Carrier raises is that the rule does not provide that 20 minutes shall be allowed in which to eat without deduction in pay "when the nature of the work does not permit." In other words, if the nature of the work on any particular day prevents the taking of the 20 minutes for meal period, no additional compensation is due the employee unless he is required to work in excess of 8 hours. With this we do not agree. This Division is of the opinion that the clause "when the nature of the work permits" gives to the carrier the right to designate the meal period at any time during the 8-hour shift "when the nature of the work will permit." In other words, the meal period does not have to be assigned at any particular time and the carrier is given the right to assign it at any time during the 8 hours.

The Carrier cites certain awards. We have reviewed all of them. We have no fault to find with Award No. 2446, wherein this Board said:

"The rules do not require that the meal period must be afforded off the property, or off the train, or on a train which is not in motion; and the fact that the time was spent on a moving train does not in itself show that the meal time was not afforded. The employee's time on the train was not taken up by work so he had no opportunity to eat. On the contrary, the record shows that no work was required of him which would interfere with his freedom to use the hour for meal purposes."

In Award No. 2446 there was an assigned meal period, while in the case at bar there was no assigned meal period.

This Division is of the opinion that as the Carrier failed to comply with Rule 29, an affirmative award is justified.

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 employees involved in this dispute are respectively carrier and employees 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 there was a violation of the rule.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of March, 1945.