

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka and Santa Fe Railway Company (Coast Lines) that H. C. Rice, the regular assigned second trick towerman at Stockton, California—hours 4:00 P.M. to 12:00 midnight with twenty minutes allowed for lunch—who was required to perform continuous service for four hours after his regular working hours on January 2, 22, 23; February 27, March 16, and April 11 through 20, 1946. And, L. M. Wilkinson regularly assigned second trick telegrapher-towerman at Barstow, California—hours 4:00 P.M. to 12 midnight with twenty minutes allowed for lunch who was required to perform continuous service for four hours after his regular working hours on May 11, 12 and 13, and October 9, 10 and 11, all in 1946. Also, Towerman H. R. Baker, regularly assigned position No. 624, Terminal Tower LAUPT, Los Angeles, 7:30 A.M. to 3:30 P.M. with twenty minutes allowed for lunch who was required to perform continuous service for four hours after his regular working hours on April 10 and April 17, 1944, the three of whom were not allowed the second meal period of thirty minutes provided by Article III-(c) of The Telegraphers' Agreement, shall each be paid thirty minutes additional pay at the overtime rate for each of the days on which they were thus required to work this additional meal period.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of December 1, 1938 as to rules of working conditions and May 22, 1946 as to rates of pay is in effect between the parties to this dispute.

During the periods involved in this dispute the employees named in the statement of claim were regularly assigned to the positions as stated therein and are positions covered by the Telegraphers' Agreement, with assigned hours as shown in the Statement of Claim, twenty minutes allowed for noon meal as set forth in a letter agreement dated July 17, 1922 and quoted in the position of the employees.

Article III-(c) of the Telegraphers' Agreement provides:

"For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. Employees shall not be required to work more than two (2) hours after completing regular established working hours without being permitted to take a second meal period, and time so taken will not terminate the continuous service period and will be paid for up to thirty (30) minutes."

to eight consecutive hours service in two or more shift office, but also require the payment of additional compensation therefor if the 30-minute meal period is not granted to such employees. The organization's proposed revision of the second sentence of present Article III-(c) in their proposed Rule 6(d) not only anticipates broadening the present rule to provide a second meal period for employees performing work in advance of and continuous with their regular assigned hours, but also includes language (last sentence) which incorporates the penalty allowance granted in Award 3001 to an employee in a one-shift office and thus recognizes that the present Article III-(c) does not provide the penalty allowed in Award 3001.

The aforementioned changes in existing agreement rules requested by the organization representatives are, therefore, positive proof of the employees' recognition that the present agreement rules do not provide for either a first or second meal period for employees such as the claimants in this dispute who are assigned to eight consecutive hours service in two or more shift offices and do not, therefore, require the payment of additional compensation in instances such as those involved in the instant dispute. It will be equally obvious that the Employees' claim in this dispute is nothing more than an attempt to obtain revisions of agreement rules through an award of the Third Division similar to those which are involved in the Employees' pending request for a revision of the current Telegraphers' Agreement. The Carrier respectfully asserts that the Third Division has no authority to revise or change existing agreement rules, and the claim of the Employees in this dispute must, therefore, be denied.

In conclusion, the Carrier reasserts that the instant claim is for reasons heretofore stated not only wholly without merit or schedule support, but it is also unreasonable, and must be denied.

(Exhibits not Reproduced.)

OPINION OF BOARD: Claimants, Telegraphers, who worked four hours after their regular shifts on the dates mentioned in the statement of claim assert a right to payment of an additional half-hour at time and one-half on such dates by reason of not having been allowed a second meal period, under Article III, Section (c) of the Telegraphers' Schedule, which reads as follows:

"For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. Employees shall not be required to work more than two (2) hours after completing regularly established working hours without being permitted to take a second meal period, and time so taken will not terminate the continuous service period and will be paid for up to thirty (30) minutes."

The Claimants were regularly assigned towermen in continuously operated towers and their overtime worked was in connection with doubling over to fill in on vacancies.

There is no dispute as to the facts. The Carrier's main contention in resisting the claim is that the above-quoted rule applies only to employees in one-shift offices for whom a first meal period is prescribed under Section (a) of Article VI of the Agreement and that it does not apply to employees in two or more shift offices to whom a first meal period during regular assignment is prohibited in Article III, Section (a). In other words, Carrier says a "second" meal period is due under the rule only where an employee is entitled to a "first" meal period during his regularly assigned hours.

We cannot agree with this contention of the Carrier. We do not believe that the Agreement is susceptible of such a narrow and technical interpretation as the Carrier seeks to sustain. We note that in the Agreement itself Article VI is headed "MEAL PERIOD." The body of the section is specific in providing for applicability to employees working one shift and requires that a meal period be granted during certain hours of the shift and for pay-

ment at the pro rata rate if not granted during such hours. Article III, on the other hand, is headed "HOURS OF SERVICE, OVERTIME, CALLS, SUNDAY AND HOLIDAY WORK," and all sections thereof are applicable to all employees except Section (f) which is limited to employees at small non-telegraph or non-telephone agencies where service is intermittent and part of Section III(a) which provides that where two or more shifts are worked, eight consecutive hours, with no allowance for meals, shall constitute a day's work. If it were the intention of the parties to confine the provisions of Article III-(c) to one-shift employees, would it not have been logical to put that provision in Article VI, or to word Article III-(c) in such a manner as to leave no doubt that it was restricted to employees in one-shift offices. We do not believe that the use of the word "second" results in any such restriction for it is logical to assume that sometime during the first eight hours of employment the employees on two or more shifts would have had a first meal, whether in a prescribed period or not and that the use of the word "second" refers to the meal as much as it does to the period of time required to consume it. However, even if we were wrong in this latter conclusion, it is noted that the Carrier in 1922 had promulgated a circular which stated that it had decided—not as a matter of agreement, but as a gratuity—that where two or more shifts are worked, it would allow not to exceed 20 minutes for lunch without deduction in pay at such time during their period of assignment as will least inconvenience the service. Thus for all intents and purposes such employees did have a first meal period at the time of the signing of the Agreement, even though the denial of same would not support a claim for compensation for such twenty minute period.

We believe that it is an inescapable conclusion that the meal period provided for in Article III was intended as incidental to the working of two hours, after completion of regularly established hours, by all employees subject to the Agreement. Thus construing the rule, the situation before the Board in this case is akin to that which confronted us in Award 4054, in which the claimants were sustained. We believe an affirmative award is indicated in the present case. Accordingly, the claim will be sustained except that as to the Claimant Wilkinson, the date of May 13, 1946 shall be excluded for the Carrier asserts and the Employees do not deny that Wilkinson only worked his regular shift on that day.

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 Carrier violated the Agreement.

AWARD

Claim sustained as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of January, 1949.