

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

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

(a) The Carrier has violated the Clerical Agreement in failing to properly assign meal period to position of AAR Clerk located in the East End Car Shop at Hinton, West Virginia, between the period from January 2, 1945 to November 5, 1947, inclusive, and

(b) That Clerk O. E. Hill and/or any other employees who have worked the position of AAR Clerk from January 2, 1945 to November 5, 1947, inclusive, be additionally compensated for 15 minutes at the punitive rate for each day on which his hours of assignment were from 7:15 A.M. to 4:15 P.M., and 45 minutes at the punitive rate for each day on which his hours of assignment were from 6:45 A.M. to 3:45 P.M.

EMPLOYEES' STATEMENT OF FACTS: The employee for whom claim is made, Mr. Onva E. Hill, established seniority on the Group 1, Mechanical Department, Hinton District, June 3, 1927. For many years prior to and on the dates for which claim is made, Mr. Hill was the regularly assigned incumbent of position No. 31, classified as "AAR Clerk", located in the East End Car Shop Office, Hinton, West Virginia.

During the period beginning January 2, 1945, and ending November 5, 1947, Mr. Hill's hours of service and meal period assignments were seasonal in accordance with the usual hours worked by the Shopcrafts employees rather than constant.

On January 2, 1945, and until March 15, 1945, his assigned hours were from 7:15 A.M. to 4:15 P.M., with meal period from 12:30 P.M. to 1:30 P.M.

Beginning March 15, 1945, and continuing until October 1, 1945, his assigned hours were from 6:45 A.M. to 3:45 P.M., with meal period from 12:30 P.M. to 1:30 P.M.

Thereafter the hours changed twice each year in a corresponding manner until on November 6, 1947, the meal period was changed so that it fell within the time limits beginning with the ending of the fourth hour and the beginning of the seventh hour after starting time of the position.

3. Having acquiesced in the violation and not having made claim for correction until approximately 17 months after correction was made, the organization, under the doctrine of your Board in Award 4070 as well as others, is barred from making claim for retroactive adjustment.

All evidence introduced in this submission has been previously discussed in conference or by correspondence with representatives of the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: From their respective statements, the parties, it is clear, agree on the essential facts, namely that (1) for a period of about 34 months beginning January 2, 1945, AAR Clerk Hill was assigned daily hours of work and a meal period which under Rule 29 (c) of the effective Agreement between the parties, made the Carrier liable to the payment of punitive rates for certain numbers of minutes each day; (2) the Carrier failed to make such payments; and (3) neither the employee nor his Organization protested such action or filed a claim thereon until approximately 17 months after the Carrier changed Hill's work and meal assignments to conform with the applicable provisions of the Agreement.

The issue in dispute is whether, in the light of all these facts, the Carrier should be absolved from liability for its admitted infraction of the Agreement.

We think not. It is true that, from the standpoint of passage of time, the violation is rather stale. Furthermore it has long been discontinued. But neither the Railway Labor Act nor the parties' Agreement contains provisions that can be construed in any way as a "statute of limitations". Further, upholding the employee's claim does not prejudice the Carrier in future relations with the Organization's members which do not violate the Agreement; for example, no seniority provisions are involved and nothing has to be done over. We believe that Clerk Hill and any other employees who may have worked the position of AAR Clerk at Hinton, West Virginia, from January 2, 1945 to November 5, 1947, inclusive should be compensated as requested for the improper assignment of meal periods during those months.

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 in respect to the position and dates specified.

AWARD

Claim (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1952.