

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: The Southern Pacific Company violated and continues to violate Rule 2 when they refuse to compensate certain employees whose interval of release from duty does not exceed one (1) hour.

Claim is for all employees so affected to be compensated for all monetary loss sustained because of such violation.

EMPLOYEES' STATEMENT OF FACTS: The following jobs are in dispute as to whether the break indicated, is properly one covered by Rule 2(b) or an established meal period.

					BREAK
JOB 58	8:30AM to	10:15AM—11:15AM to	5:30PM		1 hr.
JOB 63	3:40PM to	9:40PM—10:10PM to	12:30PM		30 min.
JOB 66	7:40PM to	9:40PM—10:10PM to	12:30PM		30 min.
JOB 68	7:40PM to	9:40PM—10:10PM to	12:30PM		30 min.
JOB 301	7:40PM to	9:40PM—10:10PM to	12:30PM		30 min.
JOB 303	7:40PM to	9:40PM—10:10PM to	12:30PM		30 min.
JOB 304	7:40PM to	9:40PM—10:10PM to	12:30PM		30 min.
JOB 305	7:40PM to	9:40PM—10:10PM to	12:30PM		30 min.
JOB 19	5:45AM to	12:15PM— 1:15PM to	2:45PM		1 hr.
JOB 16	5:45AM to	12:45PM—12:45PM to	2:45PM		1 hr.
JOB 56	5:45AM to	9:30AM—10:30AM to	2:45PM		1 hr.
JOB 9	5:30AM to	9:45AM—10:45AM to	2:30PM		1 hr.
JOB 8	5:30AM to	9:15AM—10:15AM to	2:30PM		1 hr.
JOB 11	2:30PM to	6:00PM— 7:00PM to	11:30PM		1 hr.
RELIEF O	The break varies according to job relieved.				
RELIEF J	The break varies according to job relieved.				
RELIEF G	The break varies according to job relieved.				
RELIEF S	The break varies according to job relieved.				
RELIEF T	The break varies according to job relieved.				

The several incumbents of the above jobs filed appropriate claims with the timekeeper requesting pay at the rate of time and one-half, for the extent of the break in the individual case.

These claims were denied and reason given for their denial was stated as the break covered time off account of meal period.

the contrary, as heretofore established come within the purview of Rule 2(a) of the current agreement, which serves to deny the claim in this docket.

Even if Rule 2(b) was applicable, it would not support the instant claim, since it specifically provides that meal periods shall be excepted in computing time, and said rule contains no requirement that meal period shall be designated on work sheet or by other means.

The petitioner is simply attempting to secure through an award of this Division an agreement provision over and above that which was agreed to by the parties. Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement, but to the contrary the carrier's action was clearly contemplated by the current agreement, the carrier respectfully submits that within the meaning of the Railway Labor Act, the instant claim involved request for change in agreement, which is beyond the purview of this Board. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and requests that said claim, if not dismissed, be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Assuming ambiguity of Rule 2, as contended by Employees, the actions of the parties over a long period of time is the best evidence of the intentions of the parties under the Agreement.

Under the facts in the instant case, we find no basis for a sustaining award.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of October, 1955.