

Award No. 11445

Docket No. MS-11210

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**GRAIN ELEVATOR WORKERS AND MAINTENANCE
EMPLOYEES LOCAL 1732 INTERNATIONAL BROTHERHOOD
OF LONGSHOREMEN AFL-CIO**

**THE BOARD OF TRUSTEES OF THE
GALVESTON WHARVES**

STATEMENT OF CLAIM: The petitioner, the Union named above, requests an award to the effect that Article IX, Rule 3, of the current agreement between the parties herein, copy of which agreement is attached hereto and identified as Exhibit "Union 1", means that if an employe is notified before the supper period that he must report back to work at the conclusion of the supper period, and the supper period is from 6 to 7 P.M., and the employe is knocked off of work at 5 P.M., to report back at 7 P.M., such employe is entitled to wages at time and one-half, for the period 5 to 6 P.M.

EMPLOYEES' STATEMENT OF FACTS: On several occasions, beginning approximately March 24, 1958, and to date, the employer has begun to knock off employes at 5 P.M., notifying them to return for extra work at 7 P.M. The dinner period according to the contract is from 6 to 7 P.M., except on Saturday when it is from 5 to 7 P.M. On those dates when the dinner period or supper period is from 6 to 7 P.M., the employer has knocked the men off at 5 and told them to return at 7. There has been no pay for the period from 5 to 7 P.M. This is the present dispute, namely as to whether or not the employer owes the men for the period from 5 to 6 P.M. under Article IX, Rule 3, of the agreement. The employes have met with the company on several occasions and attempted to settle this matter amicably without any result.

POSITION OF EMPLOYEES: It is the position of the employes in this matter that Article IX, Rule 3, means that if the men are notified before 5 P.M. that they must return to work at the conclusion of the supper period at 7 P.M. their service shall be considered to be "continuous" under that provision until the supper period. In other words, when Article IX, Rule 3, states "The continuous service shall not be considered interrupted", it means that the men will be paid up until the supper period and then thereafter for the hours worked. This would mean that the men must be paid for the hour from 5 P.M. to 6 P.M. when they are going to be required to return to work at 7 P.M. This payment would of course be at time and one-half. Article IX, Rule 3, cannot mean anything else and if the employer is allowed to order the men back at 7 P.M. without making any payment for this period and to knock the men off and to not make any payment for this period from 5 to 7 P.M. then

neither needed nor performed. We submit that if the Employees want a new rule as they have indicated in their claim, proper notice should be served the Carrier under Section 6 of the Railway Labor Act, as amended, and not through the route chosen by the Employees.

CONCLUSION:

In summary, we submit that (1) the Employees have misstated the facts of the case in that they have ignored over one years past practice under the existing agreement and at least ten years practice under prior agreements in presenting their statement of facts to you, (2) the Employees have applied the wrong rule to the given situation and have deliberately ignored another rule which governs the instant case, and (3) the Employees have requested you to write a new rule that does not now exist and that requires compensation to be paid for a period when service is not needed or performed.

We further submit that the Carrier has correctly applied the existing agreement consistently with the individual situation involved and specifically the instant case and that the existing agreement has not been violated.

This claim has been processed in accordance with the provisions of the Railway Labor Act, as amended, and the agreement between the Board of Trustees of the Galveston Wharves and the Grain Elevator Workers and Maintenance Employees Local 1732, and has been considered in conference. All information presented herein has been discussed in conference with the duly authorized Employees' representatives. Carrier Exhibits "A" and "B" are attached and made a part of this submission. All data contained in this submission has been presented to the employees as a part of the question in dispute.

We urge that, in consideration of the facts presented, the claim of the Employees be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Petitioner states the issue as follows:

"The question involved in this submission is the proper interpretation and application of Article IX, Rule 3, of the current Agreement between the Board of Trustees of the Galveston Wharves and the Grain Elevator Workers and Maintenance Employees, Local No. 1732, International Brotherhood of Longshoremens, AFL-CIO."

The Carrier states that Rule 3 of Article IX must be considered with Rules 1 and 5 of the same Article. They read as follows:

"Rule 1.

For continuous service after regular working hours, employees will be paid time and one-half the straight time rate."

* * *

"Rule 3.

If an employee is notified before the supper period that his work is to continue at the conclusion of the supper period, the continuous serv-

ice shall not be considered interrupted, and the employe will be paid a minimum of two hours at the overtime rate provided he reports for work."

* * *

"Rule 5.

Employes called or required to report for work and working will be allowed a minimum of four hours at the straight time rate for two hours and forty minutes or less."

Rule 1 of Article VII of the Agreement provides that a workday shall consist of eight (8) hours, between 8:00 A. M. and 5:00 P. M., with a lunch period between 12:00 noon and 1:00 P. M.

Rule 3 of Article VII provides for specific meal periods as follows:

"Rule 3.

Meal hours are to be paid at double time, if worked, with a minimum of thirty (30) minutes. Meal hours shall be as follows:

"Breakfast	6:00 A. M. to 7:00 A. M.
Dinner	12:00 noon to 1:00 P. M.
Supper*	6:00 P. M. to 7:00 P. M.
Midnight Lunch	12:00 midnight to 1:00 P. M.

*Saturday supper period to be from 5:00 P. M. to 7:00 P. M."

Sometime prior to 5:00 P. M., employes were notified to quit at their usual time and report back at 7:00 P. M. This schedule depends on the loading of boats for export trade. The practice has prevailed for over ten years. Carrier paid the employes on the basis of Rule 5 of Article IX. Petitioner contends that under Rule 3 of Article IX employes are in "continuous service and therefore entitled to pay at time and one-half for the period between 5 P. M. when they were knocked off and 6 P. M. which is the supper hour."

We do not agree with the Petitioner. Continuous service as used in Rule 1 and in Rule 3 of Article IX means consecutive service. They apply when an employe works beyond 5:00 P. M., without interruption, except during the supper period. If he works during his supper period, he is paid double time his rate for that hour, as provided in Rule 3 of Article VII. Rule 3 of Article IX applies only if an employe works to 6:00 P. M. and is required to resume work at 7:00 P. M. This constitutes continuous service.

The scheduling of meal periods in said Rule 3 of Article VII is consistent with the needs of the business and conforms to the basic hours of the waterfront operations.

On the basis of the record and the provisions in the Agreement, we are obliged to hold that the employes were properly paid under Rule 5 of Article IX.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.