

Award No. 11781
Docket No. MW-11263

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
WESTERN MARYLAND RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement on various dates in September and October, 1957 (precise dates were furnished and made known to the Carrier in letter of claim presentation and in letters of appeal) when it required Messrs. Stanley Nedrow, J. L. Smith, C. E. Turner, R. F. Drees, Floyd Durst, J. W. Gerhart, L. Sensler and Elvin L. Zembrower to work during meal period and failed and refused to allow compensation therefor in conformance with the provisions of Rule 28.

(2) Each of the Claimants named in Part (1) now be allowed, in addition to other compensation received, thirty (30) minutes' straight time pay for each specified day in September and October 1957 in which they were required to work during their meal periods.

EMPLOYEES' STATEMENT OF FACTS: The assigned hours of each of the Claimant B&B employees were as set forth in a bulletin reading:

"Cumberland, Md., April 22, 1957

Supervisor of Bridges and Buildings
To — Supervisor of Track — Cumberland to Elkins
Supervisor of Track — Cumberland to Bowest
From — Division Engineer
Subject — Forces — Tour of Duty

Effective April 29, 1957, and until further notice, the tour of B. & B. and Track Forces on your respective territories will be:

6:00 A.M. to 10:00 A.M. (EST)
10:00 A.M. to 10:30 A.M. Lunch (EST)
10:30 A.M. to 2:30 P.M. (EST)

Carrier have been presented to the Employes and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the contention of each of the Claimant B&B employes that by bulletin the Carrier allowed an assigned meal period for the Claimants of a half-hour meal period between 10:00 A. M. and 10:30 A. M., as follows:

“Cumberland, Md., April 22, 1957

— Supervisor of Bridges and Buildings
To — Supervisor of Track — Cumberland to Elkins
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10:30 A.M. to 2:30 P.M. (EST)”
(Emphasis ours.)

It is the further contention of the Claimants that the Carrier capriciously juggled the meal period within the two hour spread provided for within Rule 27 (a), hereinafter quoted, in an attempt to deliberately delay the lunch period to avoid the application of overtime rules and that Claimants were required to suspend work during the assigned hours to absorb overtime, all of which is denied by the Carrier who contends that there has been no violation of the agreement.

The rules of the agreement pertinent to the situation now before us are, as follows:

“MEAL PERIOD.

“Rule 27 (a). When a meal period is allowed, it will be between the ending of the fourth hour and beginning of the seventh hour after starting work unless otherwise agreed upon between the Local Chairman and Employing Officer.

“(b). Unless acceptable to a majority of the employes directly interested, the meal period shall not be less than thirty (30) minutes nor more than one (1) hour.”

“WORKING DURING MEAL PERIOD

“Rule 28. If the meal period is not afforded within the allowed or agreed time limit and is worked, the meal period shall be paid

for at pro rata rate and twenty (20) minutes, with pay, in which to eat shall be afforded at the first opportunity."

The following appear to be, generally, the undisputed facts in this case: The Claimants were employed in a gang in the Bridges and Building Sub-Department with assigned headquarters at Cumberland, Maryland. . . . The assigned hours of the gang were 6.00 A. M. to 2:30 P. M., with a 30-minute lunch period. During the period of time involved in the present dispute, the Claimants were being used to make repairs to Big Savage Tunnel located on the Western Division between Colmar and Deal. Big Savage Tunnel is single-tracked, concrete-lined, 3,295 feet in length and was built in 1911. The B&B gang used a scaffold car in making repairs to the lining of the tunnel. This car has a superstructure approximately 14 feet in height, built to the contour of the tunnel with working platforms. It is not self propelled, but is used in conjunction with a motor car. A non-commercial stubend siding was constructed on the south end of the track between the west portal of Big Savage Tunnel and Deal and this siding was used for clearing the Maintenance of Way equipment from the tracks when that was necessary. While the employes were engaged in working at Big Savage Tunnel, they were housed in camp cars parked on a siding at Deal, about 1 ½ miles west of the tunnel. They ate their breakfast and dinner at the camp cars, and a lunch was prepared for them which they ate at the point where they were working. In order to observe their meal period, it was necessary for the gang to remove their tools and equipment from the track, place the scaffold car on the spur track, and close the switch so that the track would be cleared for passage of trains. On some of the workdays for which the claims are made the time of the commencement of the meal period varied from eight to twenty minutes after 10:00 A. M. but all of them started before 10:30 A. M. and the Claimants were relieved for thirty minutes to eat.

The nature of the work being done was such that it would have been impracticable for meals to have been started on the minute. The tunnel the employes were working on was three-fifths of a mile on the main line. The equipment that was being used obstructed the tracks and had to be removed for trains to pass. On the dates for which the claims are made, the time at which the meals were taken varied only from eight to twenty minutes. That variation could not be considered unreasonable or burdensome to the employes. It cannot be said, under all the facts and circumstances, that the lunch period was delayed capriciously by the Carrier nor for the purpose of absorbing overtime.

This matter is determined on the facts presented in the instant case and for the reasons cited in this Opinion. It is not to be considered as a precedent in future considerations before this Board of rules herein involved.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement has not been violated.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1963.