

Award No. 13468
Docket No. MW-14587

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it assigned overtime service on August 21, 24, 27, 28 and 29, 1962 to a section laborer who is junior in seniority to Section Laborer C. O. Capellan.
(Carrier's file No. M-954-62)

(2) Section Laborer C. O. Capellan now be allowed three and one-third (3 $\frac{1}{3}$) hours' pay at his time and one-half rate account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant was regularly assigned as Section Laborer with the section gang headquartered at Hyannis, Nebraska, which was assigned a one (1) hour meal period.

On August 21, 24, 27, 28 and 29, 1962, this section gang was engaged in work which required flag protection. Such protection was required continuously from the start of work in the morning until the completion of work in the afternoon; including the meal period. The section laborer assigned to this flagging work was instructed to work during his regular meal period and to take 20 minutes in which to eat at the first opportunity thereafter, which he did.

Said section laborer received eight (8) hours' pay at his straight time rate and forty (40) minutes' pay at his time and one-half rate for each of the days here involved. The balance of the section gang received eight (8) hours' pay at their respective straight time rates on each of these days.

The claimant, who was senior to the section laborer assigned to the subject flagging work, was available, willing and qualified to perform said work but was not given an opportunity to do so.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

designate who in a gang shall perform the important work of providing flag protection during the regular assigned hours of the gang. See Carrier's Exhibits 1, 3, 4 and 6.

(3) Claimant did not work his meal period on the dates claimed.

(4) The employees who did work during their meal period were paid in conformity with Rule 35 at the pro rata rate.

(5) Rule 35 is a special rule which prevails over general rule 40 cited by Petitioner.

(6) There is no provision in the agreement requiring Carrier to pay Claimant any amount for an assigned meal period which has been afforded.

If the Board will give consideration to these clear facts and relate them to the provisions of the agreement, there can be no decision but denial of the claim in its entirety.

(Exhibits not reproduced).

OPINION OF BOARD: From August 1 through September 21, 1962 the section gang headquartered at Hyannis, Nebraska was engaged in work which required flag protection. On August 21, 24, 27, 28 and 29, 1962 this was provided by a junior laborer who worked through his regular one hour work period and then took twenty minutes in which to eat when available thereafter.

The instant claim is filed on behalf of a senior employe who alleges he had a prior right to the meal period flagging work and should be compensated for the extra earnings thus denied him.

The Organization contends that the Carrier knew in advance that this position would be flagging during meal period and that since this constituted overtime work it should have been assigned to the senior employe in the gang. Since the Carrier violated the parties' Agreement in failing to assign the most desirable work to the Claimant he is entitled to overtime compensation for earnings lost on each of the dates enumerated.

The Carrier denies liability on the grounds that seniority rights to overtime do not run to meal period work during the course of the employes normal working day. In addition it notes that the Carrier had not anticipated that the meal period flagging would be performed by other than a relief man, and thus was not suitable for early assignment to a senior laborer on the basis of anticipated overtime work.

Rule 35 (c) of the parties' Agreement clearly specifies:

"If the meal period is not afforded at the agreed time, and is worked, the meal period shall be paid for at the pro rata rate and time in which to eat (not to exceed twenty (20) minutes) shall be afforded at the first opportunity within the regularly assigned work period without deduction in pay."

In this case the meal period was not afforded to the junior laborer at the agreed time and was worked. Accordingly, he received the remedy specified therein: payment of the meal period at the pro rata rate and twenty minutes

compensatory time. It is clear that the remedy provided is personal and specific in nature and runs only to the individual affected.

We are unable to agree with the contention of the Organization that this remedy also runs to the senior laborer. The Organization has failed to meet its burden of proving that the Carrier knew at the start of the shift that the disputed job would be worked through the meal period without a relief flagman on the five days listed. Inasmuch as the Claimant was not deprived of his own meal period on those days, we find the instant claim lacks merit.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1965.