Award No. 13903
Docket No. CL-14379

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5417) that:

1. Carrier violated the Clerks' Agreement when it failed and refused to allow twenty (20) minutes additional compensation to employes in the Trainmaster's Office holding continuous service assignments, when the requirements of the service did not permit twenty (20) minutes in which to eat, during their tour of duty.

2. Employes in the Trainmaster's Office be allowed twenty (20) minutes additional compensation, specifically, G. Allen, for September 25, 26, October 2, 3, 4, 5, 6, 7, 9, 10, 14, 16, 17, 23, 24, 27, 28, 30 and 31, E. Vokral, for September 22, 26, 28, 29, October 1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31 and November 1, R. Beilka, for September 22 and November 1, and J. Slowinski, for September 24, 25, October 8, 9, 12, 15, (15 on double) 16, 19, 22, 23, 29 and 30.

EMPLOYES' STATEMENT OF FACTS: Claimants Allen and Vokral are two of three Train Clerks employed for regular operations requiring continuous hours in the Carrier's Trainmaster's Office. They are regularly assigned to work from 4:00 P. M. to 11:59 P. M. and 11:59 P. M. to 8:00 A. M., respectively, each eight consecutive hours as per Rule 41.

Claimants Beilka and Slowinski are the incumbents of Relief Positions No. 1 and No. 2 respectively, and perform relief services on the three Train Clerk Positions, Chief Clerk Position and a General Clerk Position, which are also maintained in the Trainmaster's Office and also employed for regular operations requiring continuous hours.

Duties assigned to the Train Clerk Positions are, generally speaking, those set forth in Bulletin No. 328, dated August 24, 1960. Employes' Exhibit No. 1.

Office in which the claimants were involved were such that the employes could have and if they did not, should have taken time to eat as provided for in Rule 41, in the 1951 agreement, and as instructed by the Trainmaster on September 21, 1962. It is the carrier's further conclusion that if the requirements for their service were such as to prevent them from taking the time to eat, they should have had no difficulty in giving a reasonable explanation for their inability to do so in support of their demand for the penalty payments they now seek.

The carrier contends the claims covered by this docket lack merit because:

(a) The employes did not comply with the terms of the 1951 settlement agreement reading:

"We agreed to the continuance without change, the method of allowing time to eat, which has been in effect prior to the filing of these claims, to individuals filling positions covered by Rule 41, at locations and offices where only one employe is worked on a shift, **that the employe would be expected, as in the past, to take time to eat, when the nature of the work permitted, after a reasonable period of the starting time of his position.**"

Nor did they at any time comply with that portion of the 1951 agreement reading:

"and reasonable proof is given that the nature of the work was actually such that the employes could not be allowed this period in which to eat."

OPINION OF BOARD: Petition's claim is predicated upon its assertion that the terms of Rule 41 of the applicable agreement — quoted below — were violated when Carrier did not give Claimants 20 consecutive minutes for lunch.

Claimants are assigned to jobs in regular operation which require continuous hours. No charge is made that it was impossible for Claimants to have 20 minutes for the purpose of eating lunch but rather the claim is based upon the premise that the 20 minutes must be consecutive.

Rule 41 of the agreement provides as follows:

"CONTINUOUS WORK WITHOUT MEAL PERIOD

For regular operations requiring continuous hours, eight (8) consecutive hours without meal period may be assigned as constituting a day's work, in which case not to exceed twenty (20) minutes shall be allowed in which to eat without deduction in pay, when the nature of work permits."

After a careful review of this record we are of the opinion that though the parties are not the same, the essential facts of this dispute were previously presented to this Board for decision in Award No. 13310. The argument presented by both parties in that dispute were, for the most part, reiterated here. We do not find Award No. 13310 to be palpably in error, therefore, we will follow its decision by denying the claim presented here, and for the same reasons.

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 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 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 15th day of October 1965.

LABOR MEMBER'S DISSENT TO AWARD 13903, DOCKET CL-14379

Award 13903 is in error. It cannot be supported on any basis other than an apparent desire to follow later denial Awards and reject earlier sustaining Awards.

In this case, the Board had taken the exact language including the caption, as set out in Rule 41 in this Award, and had placed an interpretation thereon in 1945 which was fully consistent with the Employes' claim and arguments here. In view thereof the Employes had every right to rely on this Board's interpretation of that language when they agreed to the rule in 1949. They likewise had every right to rely on that interpretation when the instant dispute arose in 1962, for the language had not been changed, and prior Award 2855 had continued to prevail. This was a case wherein the same arguments, the same language, and strikingly similar circumstances, had resulted in sustaining the Employes' position. Therefore, Award 2855 should have prevailed herein unless it, having been subjected to the same test as the Referee suggested for Award 13310, had been found to be palpably in error. The records involved do not support the conclusion of the Referee in Award 13310 that Claimants, in Awards 2855, 2856, 3943 and 6814, had no time in which to eat. For example, see pages 10 and 12 of Award 2856 with reference also to Award 2855 as well as the Dissent to Award 13310. The records clearly indicate the Awards "distinguished" in Award 13310 were ultimately based on the same contentions as were made herein. I feel the Referee in Award 13310 erred in his conclusion and that the present Referee erred in blindly following that Award without thoroughly reviewing Awards 2855, 3943 and 8194 which were presented to him.

Granted that precedent Awards are not always necessarily binding on subsequent Referees, it most certainly does not follow that they should be ignored and the idea that "the latest is the greatest" adopted. Such action does violence to rules arrived at in good faith and, in a real sense, can be likened to establishment of ex post facto law.

Such a practice, even while paying lip service to the value of precedents, merely signals a new round of interpretations and serves to unsettle what had previously been considered a settled matter.

For the above, and the reasons given in Labor Member's Dissent to Award 13310, I dissent to this Award.

D. E. Watkins
Labor Member
11-12-65