

Award No. 14456
Docket No. CL-13718

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5221) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, at Dunsmuir, California, when it arbitrarily deducted \$7.86 from earnings due Mrs. G. B. Stenyem, Chief Telephone Operator, in 2nd payroll period of April, 1961; and,

(b) Carrier shall now be required to return the \$7.86 to Mrs. G. B. Stenyem.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

At the time of this dispute, Mrs. G. B. Stenyem (hereinafter referred to as claimant) was regularly assigned to No. 320 Chief Telephone Operator position at Dunsmuir, California, 8:00 A. M. to 4:00 P. M., rest days Saturday and Sunday, rate \$18.86 per day. Claimant, in addition, received a daily compensation of twenty (20) minutes at straight-time rate of her assignment in lieu of a lunch period.

Claimant went on her assigned vacation March 17 to 31, 1961, inclusive, and claimed her daily regular compensation of eight (8) hours and 20 minutes at straight-time rate for each date while on vacation and was compensated as claimed.

The unassigned Telephone Operator filling claimant's vacation vacancy on dates claimed, was paid 20 minutes compensation in addition to her daily eight-hour compensation for each date.

vided in Article 14 of the Vacation Agreement of December 17, 1941, and by letter dated December 7, 1948 (Carrier's Exhibit D), Carrier's Assistant Manager of Personnel agreed to such proposal and asked therein that Petitioner's General Chairman submit a proposed joint statement of facts covering the "Question at Issue." However, said proposed statement was not forthcoming and the claim was not progressed further and no similar claim was ever presented by Petitioner throughout the intervening years until the instant claim arose at Dunsmuir.

By letter dated May 11, 1961 (Carrier's Exhibit E), Petitioner's General Chairman submitted claim to Carrier's General Superintendent of Communications on behalf of G. B. Stenyem, Chief Telephone Operator, Dunsmuir, California, for 20 minutes additional compensation paid for and not worked, claimed by Stenyem during period of her vacation for 10 days, March 17 through 31, 1961, exclusive of Saturday and Sunday (said claim was inadvertently paid to claimant at the time card level but deducted in amount of \$7.86 from claimant's second period pay roll earnings April 1961), alleging that Rule 7(a) of agreement of December 17, 1941 (quoted above), provided that the vacationing employe be compensated for the 20-minute meal period, and by letter of May 19, 1961 (Carrier's Exhibit F), Carrier's General Superintendent of Communications denied the claim.

By letter of August 17, 1941 (Carrier's Exhibit G), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel on same basis as presented by the Division Chairman, and by letter dated November 22, 1961 (Carrier's Exhibit H), Carrier's Assistant Manager of Personnel denied the claim, stating that no provision of the Clerks' Agreement nor of agreement of December 17, 1941, contemplates payment of the 20-minute period in which to eat to a vacationing employe, and called to the General Chairman's attention the previous claim appealed to Carrier's Assistant Manager of Personnel in 1948 (see Carrier's Exhibit A), referred to above, and that said claim was abandoned.

(Exhibits not reproduced.)

OPINION OF BOARD: Mrs. G. B. Stenyem, a Telephone Operator with hours of service from 8:00 A. M. to 4:00 P. M. filed the instant claim when her daily compensation of twenty minutes at straight time rates in lieu of a lunch period was not added to her vacation pay.

The Organization contends that the 20 minutes' pay was a regular part of the Claimant's earnings and could not be denied her during her vacation. It asserts that this extra was part of her daily compensation under the terms of Article 7 (a) of the parties' Agreement, and that the long standing practice was to include such extras in vacation computations.

The Carrier denies that any claim such as this has been paid before and notes that identical claims filed at an earlier date were abandoned by the Organization. It asserts that since the Claimant is not required to work during lunch periods while on vacation and was not denied lunch there is no justification for her receiving that allowance.

This claim has merit. The twenty minute lunch time allowance granted to Mrs. Stenyem had become an integral and anticipated part of her earnings and expectancy. In this respect it was comparable to the traveling and waiting time granted by Chairman Wyckoff in Award No. 18 of Special Board of

Adjustment No. 174 as necessary to assure payment of the claimants daily "compensation" during her vacation. To deny the claim would mean the Claimant would have been worse off financially during her vacation than if she had continued to work. (Parties' Interpretation of Article 7 (a), June 10, 1942.)

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1966.