

Award No. 16790
Docket No. CL-16433

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, 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 6039) that:

1. The Carrier violated the Clerks' Agreement when it unilaterally and arbitrarily changed the hours of assignment of the incumbents of Positions Nos. 207, 132 and 318, to the extent of thirty (30) minutes daily from those specified at the time the positions were advertised and from the assigned hours specifically agreed to by separate agreement between the parties.

2. E. M. Seiber, W. Sallay, Walter Johnson and/or successors if any, who have been adversely affected, shall be compensated for thirty (30) minutes daily at the overtime rate and twenty (20) minutes' pay, at the straight time rate, effective June 7, 1965 and continuing so long as the violation continues, or until such time as corrective measures are applied.

EMPLOYEES' STATEMENT OF FACTS: The Carrier at its Clearing, Illinois car handling facility maintains an Agent's Office that is operated primarily five (5) days per week with one eight (8) hour shift.

Prior to March 26, 1957 and July 21, 1958, all positions in the Carrier's Agent's Central Office, were generally assigned to work 8 A. M. to 4:30 P. M., with an assigned meal period of thirty (30) minutes, under the provisions of the current Rule 39, which included Positions 207, 132 and 318, among others. Current Rule 39 is identical to our former Rule 40.

On March 18, 1957, the Carrier issued Bulletin No. 23, advertising Position 207 with assigned hours of 8 A. M. to 4 P. M., indicating that the status of the position was changed from one with an assigned meal period under the provisions of then Rule 40, to one of continuous service, under the provisions of then Rule 41, without concurrence or agreement.

Employees' Exhibit No. 1.

"RULE 40.

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 a period not to exceed twenty (20) minutes shall be allowed between the ending of the third hour and the beginning of the seventh hour after starting work in which to eat, without deduction in pay.

If the employe is required to work any part of the 20 minutes allowed to eat, he shall be compensated therefor at the straight time rate on the minute basis in addition to his daily compensation.

RULE 41. MEAL PERIOD

When meal period is allowed, it will be regularly assigned between the ending of the fourth hour and beginning of the seventh hour after starting work, unless otherwise agreed upon by the officer in charge of department and General Chairman.

RULE 42.

WORK DURING ASSIGNED MEAL PERIOD

Employees required to work any part of their assigned meal period, will be allowed time therefor on the minute basis at the rate of time and one-half, and in the event there is not ample time within the assigned period to procure lunch, twenty minutes in which to eat will be allowed at the first opportunity without deduction in pay therefor."

These rules were incorporated in the agreement signed February 26, 1964 to become effective March 1, 1964. Rule 73 of the 1964 agreement provides that:

"RULE 73.

DATE EFFECTIVE AND CHANGES

(a) This Agreement shall be effective March 1, 1964, superseding all other rules, agreements and understandings in conflict herewith, and shall continue in effect until changed as provided herein or in accordance with the Railway Labor Act, as amended."

OPINION OF BOARD: By bulletin notice dated March 18, 1957 Carrier changed Position No. 207 from a position with an assigned meal period under Rule 42 to one continuous service under Rule 41. The assigned meal period was thirty minutes and this had the effect of shortening the work day by thirty minutes. There was no objection by the Organization provided that same additional twelve positions be similarly changed. The additional positions were changed.

By bulletin notice dated May 29, 1965 Carrier changed Position Nos. 207, 318, and 132 back to positions with an assigned thirty minute lunch period thereby extending the quitting time from 4:00 P. M. to 4:30 P. M. Such changes were made without consulting the Organization.

Organization contends that Carrier violated several rules of the Agreement, principally: Rules 9 and 39, among others, by unilaterally effecting meal changes on the positions in question.

Rule 9 states:

"RULE 9.

**BULLETINS - ADVERTISING NEW POSITIONS
AND VACANCIES**

(a) New positions or vacancies of more than thirty (30) calendar days' duration will be promptly bulletined in agreed upon places accessible to all employees affected for a period of seven (7) calendar days. Bulletin to show location, descriptive title of position, brief description of the principal duties, rate of pay, assigned hours of service, assigned rest days and assigned meal period."

Rule 39 states:

"RULE 39.

LENGTH OF MEAL PERIOD

Unless agreed to by the General Chairman and employing officer the meal period will not be less than thirty (30) minutes nor more than one (1) hour."

The Organization contends that under Rule 39 the Carrier could not have increased the meal period (from 20 minutes to 30 minutes) without agreement.

The rule does not so provide. The rule has nothing to do with the Carrier's **increasing** the meal period time, as it did in the instant dispute, from 20 minutes to 30 minutes. Obviously the rule would come into effect if Carrier attempted to **decrease** the meal period from 30 minutes to 20 minutes.

Rule 9 is limited in its application to "New positions or vacancies of more than thirty (30) calendar days' duration * * *." We are not faced with either of these situations. In this connection, the Organization relies on Award 6005 wherein it was held that any change in the items listed in the bulletin rule in effect constitutes a new position and must be re-bulletined. We are inclined, however, to favor the reasoning and holding of later awards which are inclined otherwise.

AWARD 16217

"The record reveals that the primary duties of the 'Yard Clerk' position include the principal work of the former position designated as 'Outbound Clerk,' but that certain additional duties have been added.

Analysis of the Agreement fails to disclose any provision which specifically prohibits Carrier from modifying the duties of any position or requires that each duty to be performed be listed in the description of duties contained in the applicable bulletin. Furthermore, Rule 9 (a) merely requires the prompt bulletining of a new

position and does not imply that a position be deemed new because of additional duties.

In view of the foregoing, we must conclude that the Agreement does not prohibit Carrier from changing the duties of a position and even requiring that these duties be performed at a different location. Awards 13719, 13192, 14126 and 13201. Comparison of the original bulletin with the notice of May 29, 1965 reveals that the principal duties are essentially the same, and that such changes which did occur are permissible as incidental to those enunciated in the original bulletin. Awards 15799 and 15484.

Accordingly, the Claim must be denied."

AWARD 9567

"The Employees base their claims on the provision of this Rule that 'Bulletins will show the location, title, hours of service, rate of pay, new position or vacancy.' This provision does no more than specify the information which will be shown in the bulletins required by the Rule. It does not purport to state, directly or indirectly, any restraint on the Carrier from effectuating a change of position hours. We are not referred to any rule of the Agreement which has such restraining effect; and our functions do not authorize us to add it. In the absence of such rule, no violation of the agreement occurred when the Carrier changed the hours of the Claimants' positions. See Awards 7296, 7362, 7653, 7786."

AWARD 1689 (Fourth Division)

"Rule 10 (b), which requires that new positions be bulletined, presents a closer question, in view of possible inconvenience caused Claimants by the changes. However, in the absence of a rule defining or shedding additional light on the meaning of 'new positions,' we are not disposed to find the addition of a one-hour meal period and resulting reporting and quitting time changes sufficiently material to constitute 'new positions.' There is no valid basis, therefore, in our opinion, for applying Rule 10(b) to this matter. See Third Division Award 9567 and Fourth Division Award 1587."

Rule 44 is also inapplicable in that it concerns itself only with starting times and not quitting times.

Under the circumstances and facts in this dispute, the Board finds that the claim is without 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 is denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1968.