



Award No. 17179

Docket No. TE-16456

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: The General Committee of the Transportation-Communication Employees Union on the Louisville & Nashville Railroad (NC&StL Dist.) presents claim in behalf of the following operator-levermen for the second half of April 1965 Junta Tower (Cartersville, Ga.) for meal period not allowed account necessary to identify radio (station) at Junta Tower each 15 minutes, and 20 minute meal period could not be taken.

G. E. Hufstetler, Jr.	2 Hrs. & 40 minutes	Overtime
E. W. Hufstetler	3 Hrs.	Overtime
W. M. Cox	1 Hr. & 20 minutes	Overtime
L. O. Young	2 Hrs. & 20 minutes	Overtime
B. H. Cantrell	20 minutes	Overtime
J. L. Echols	1 Hr.	Overtime

Claim is also presented in behalf of the following Operator-Levermen for the First half May, 1965, Junta Tower (Cartersville, Ga.) for meal period not allowed account necessary to identify radio (station) at Junta Tower each 15 minutes, and 20 minutes meal period could not be taken.

G. E. Hufstetler, Jr.	2 Hours	Overtime
E. W. Hufstetler	2 Hours	Overtime
W. M. Cox	2 Hours & 20 minutes	Overtime
L. O. Young	2 Hours & 20 minutes	Overtime

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Louisville and Nashville Railroad Company (NC&StL District), hereinafter referred to as Carrier, and its employees in station, tower and telegraph service, hereinafter referred to as Employees, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Union, effective September 1, 1949, as amended and supplemented, is available to your Board, and is, by this reference, made a part hereof.

At page 40 of said Agreement are listed the positions in effect at Junta Tower (Cartersville, Georgia) on the effective date thereof. For ready reference the listing reads:

	Rates Per Hour
"Junta, Ga. 1st Trick Opr. Lv.....	\$1.61
2nd Trick Opr. Lv.....	1.61
3rd Trick Opr. Lv.....	1.61"

McDowell informed the claimant employees on May 8 (Exhibit "B") that it was not necessary to interrupt lunch period of 20 minutes to make radio identification. Employees ignored Mr. McDowell's instructions and filed claim for the first half of May, 1965, for overtime payment for meal period. This claim was declined by Chief Dispatcher McDowell on May 18 (Exhibit "C").

On July 3, 1965, District Chairman W. E. Yates filed claim; copy of claim is attached as Carrier's Exhibit "A".

The claim was progressed in the usual manner up to the Personnel Department. Copies of pertinent correspondence exchanges in progressing of the claim are filed as Carrier's Exhibits "B", "C", "D", "E", "F", "G", "H", "I", and "J".

(Exhibits not Reproduced)

OPINION OF BOARD: The issue in this dispute involves the question as to whether or not Carrier violated the Agreement by not allowing Petitioners to take their 20 minute meal periods during their tours of duty.

The Carrier, in its ex parte submission to this Board, stated that it did not deny the violation, but that the claims are of such a trivial nature as to be unworthy of consideration by this Board, inasmuch as it took Claimants only 5 seconds to give a radio call sign identification as required by the F.C.C. every fifteen minutes.

Thus, it is undisputed that Carrier violated the Agreement herein.

In regard to damages, Carrier argues that the rules of the Agreement do not provide for penalty overtime payment, and that Petitioners are not entitled to overtime payment for the twenty consecutive minute meal periods denied them in this dispute inasmuch as Petitioners worked only 5 seconds in making said radio calls.

The burden is upon the Petitioners to prove that they worked during said 20 minute periods in order to be entitled to overtime payment. Outside of making the brief radio call sign identifications during said meal periods, Petitioners failed to prove and did not in fact allege that they performed any other work during their 20 minute meal periods. Therefore, having failed to prove that they performed work (except for this extremely brief time to make said identification call) during their meal periods, Petitioners are entitled to recover only straight time pay.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1969.