

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21587
Docket Number CL-21465

David C. Randles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(The Baltimore and Ohio Railroad **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood, GL-7996, that:

1. Carrier violated the Agreement between the parties at **Cumbo Tower**, West Virginia when it refused to allow Mr. W. L. French 20 minutes' pay at overtime rate, each date, June 5, 6, 7, **8**, 9, 10, 12, 14, 15, 16, 19, 20, 21, 22, 23, **26**, 27, **28**, 29, 30; **July 1**, 3, 4, 5, 6, 7, 24, 25, 26, 27, 28 and 31, 1973.

2. Carrier shall compensate **Claimant** French 20 minutes' pay at the overtime rate of the 1st trick Operator position at **Cumbo Tower** for each above-listed date as claimed.

OPINION OF BOARD: The claim in the instant matter alleges that the Carrier violated the Agreement when it refused to allow claimant twenty (20) minutes' pay at an overtime rate in compensation for his **lunch** break which the claimant was unable to take on 32 occasions during June and July of 1973.

The **provision**, subsequent to June 4, 1973, in the Telegrapher **Employees'** Agreement with the Carrier provided for a 20 minute steal period within the eight hour tour without reduction in pay as well as the requirement to pay **20 minutes** punitive "if conditions prevent" **said lunch** break. The guideline the **employee** should use in taking the 20 minute break should be "consistent with train operations". The intent of the Agreement is that the **employee** should **make** the determination as to **when** and if he should take the 20 minute meal break.

Beginning with June 5, 1973, claimant alleges that he did **not have** sufficient **time** to eat, and no one told him when to eat. The Organization contends that the Carrier could well have assigned meal periods, but if such a determination is given to the **employee** to make for himself, than the Carrier must adhere to and support that determination.

An examination of the train sheets substantiated the fact that the **employee** had periods of 20 minutes during the day in which to take the 20 minute lunch break. Also **like** employees and employees who did the same job **when** the claimant was on leave did not encounter a similar problem as the claimant.

The rule of reason must prevail. The train sheets, as well as the experience of other **employees**, clearly determine that the claimant could have **taken** a 20 minute lunch break.

The claimant herein has not reasonably **exercised his** right of **determination** as provided in the Agreement.

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.

A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Poulos
Executive Secretary

Dated at Chicago, Illinois, this **17th** day of June 1977.

