NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25464
THIRD DIVISION Docket Number CL-25385

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Duluth, Missabe & Iron Range Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9849) that:

1. Carrier violated the Agreement between the parties when it failed to provide an assigned meal period on the 2:30 p.m. to 10:30 p.m. Ore Sorter Position occupied by Claimant.

2. Carrier shall now be required to compensate Ore Sorter L. D. Johnson thirty (30) minutes punitive, at the day Ore Sorter rate for each of the following claim dates: October 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29; November 1, 2, 3, 4, 5, 8, 9, 10, 11, 15, 16, 17, 18, 19, 22, 23, 24, 25 and 26, 1982.

OPINION OF BOARD: Claimant was assigned to a bulletined position as Ore Sorter Proctor Yard Office with hours from 2:30 p.m. to 10:30 p.m. for the period of October 18 to November 26, 1982. During this period, clerical employees were not assigned on a continuous around-the-clock basis at Proctor. The Claimant was not assigned a meal period during his shift while in this position. On November 30, the Claimant initiated a claim for one-half hour's pay at time-and-one-half rate for each day on the assignment.

Pertinent rules read as follows:

"RULE 28

Working During Assigned Meal Period

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

RUZE 29

Working During Assigned Meal Period

(a) Except for regular operation requiring continuous hours, all regular established positions will have an assigned meal period, which will be allowed between the ending of the 3-1/2 hour and the beginning of the 7th hour after starting time. Employees required to work any part of the assigned meal period will be paid for the actual time worked at the rate of time and one-half and at the first opportunity will be allowed not less than twenty minutes without deduction in pay in which to eat..."

During the claim processing procedure, the Carrier agreed that the Claimant was improperly assigned under Rule 28 and should have been assigned under Rule 29 (a). The Organization argues that the Claimant is entitled to the requested pay because, under Rule 29 which should have been applied, he did not receive an assigned meal period and was entitled to the payment specified in the second sentence of Rule 29 (a).

While admitting the failure to schedule the Claimant under Rule 29, the Carrier argues that the Claimant is not entitled to any monetary remedy. First, the Carrier contends that the Claimant could have complained of the non-assignment of a meal period while he was in the position, and the Carrier would then have promptly remedied the situation. Second, the Carrier points out that the Claimant suffered no monetary loss. Had he been assigned a meal period, his work hours would have extended beyond 10:30 p.m. and he would have still been required to perform eight hours' of work. Since he was (mistakenly) assigned under Rule 28, he was presumably permitted time in which to eat within his eight paid hours. Third, the Carrier states that since the Claimant was not given an "assigned meal period., he cannot be said to have worked during any such non-existent period.

The Board finds, first of all, that the filing of the claim on November 30 did not make it untimely. Rule 20 provides for the presentation of a claim "within sixty days from the date of the occurrence', and the Claimant met this time limit.

Thus, the claim is in proper form, and there was a violation of the Agreement. The Board finds, however, that a monetary remedy would be improper. While not required to file an earlier claim, the Claimant could have requested a change in his work schedule at any time during the period of his assignment. He elected not to do so. More significantly, it cannot be shown that the Claimant suffered any financial loss. Under either Rule 28 or Rule 29 (a), he would have been assigned to work eight hours. While losing an unpaid meal period during his shift, he nevertheless completed his work day earlier than he would have if he had an assigned meal period.

The Carrier defends its initial action on an assumption that the arrangement provided would have been satisfactory to the Claimant. As is now apparent, however, compliance with the rule is required, unless mutually amended by the Organization and the Carrier. Postings of non-continuous positions must necessarily include the assignment of meal periods if there is to be compliance with Rule 29 (a).

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.