

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29963
Docket No. SG-30652
93-3-92-3-443

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Norfolk Southern Corporation (former Central
(of Georgia Lines)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk Southern Corporation:

Claim on behalf of Signal Maintainer R. Hodges, assigned territory Mile Post H195 to H239 and H220 to M241, assigned working hours 8 AM to 4:30 PM with a 30 minute lunch period, Monday thru Friday, rest days Saturday and Sunday, for the following:

- (a) Carrier violated the Signalmen's Agreement, particularly Rules 10, 11, 12, and 15, when Carrier changed Signal Maintainer R. Hodges starting time and extending his meal period in order to avoid to (sic) paying Mr. Hodges overtime that he would have made if his working hours and meal period had not been changed on February 25, 1991.
- (b) Carrier now be required to compensate Signal Maintainer R. Hodges for 2 hours and 40 minutes each regular work day, starting February 25, 1991 thru April 15, 1991 and continuing thereafter until his starting time is set as it was prior to February 21, 1991 that was changed to avoid paying him a minimum call because he was required to start work prior to 8 AM, that is the starting time for other signal maintainers on the Central of Georgia Railroad that work under the same supervision.
- (c) Carrier also be required to set his lunch period at 30 minutes instead of 1 hour as is assigned to other signal maintainers and that has been established over the years by agreement and past practice.
- (d) Carrier also be required to compensate Signal Maintainer R. Hodges for 30 minutes at his overtime rate of pay for the extra 30 minutes he is required to remain on the job because his lunch period was

extended to 1 hours. Pay is to start on February 25, 1991 and is to continue each work day that he is required to take an additional 30 minutes for his lunch period." Carrier File SG-ATLA-91-4. GC File CG-391. BRS Case 8720-CofGA.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On February 22, 1991, Claimant was advised by Carrier that the starting time of his position would be changed from 8:00 AM to 7:30 AM. At that time he was also told that his unpaid meal period would be changed from 30 minutes to one hour. Carrier indicated that these changes were being made so that Claimant's schedule would coincide with that of a T&S Gang working within his territory. The Organization alleges that Claimant's starting time was changed for the purpose of suspending work to avoid overtime and that under existing past practice and terms of the Agreement meal periods have always been thirty minutes. The Organization contends that the change was in violation of Rules 10, 11, 12 and 15 of the Agreement. Carrier contends that there is nothing in the Agreement which prohibits the changes made in Claimant's assignment and that it is not prohibited from extending his meal period from 30 minutes to one hour.

The evidence is conclusive that the only meal period, both by specific contract provision and historical past practice, ever assigned Signal Maintainers has been thirty minutes. The Organization has submitted statements attesting to the fact that during 42 years of collective bargaining experience on this property meal periods never exceeded thirty minutes. Carrier has not refuted this contention. In fact, it acknowledged the practice in its final denial on the property.

Rules 10, 11 and 12, frequently refer to thirty minute meal periods, albeit in a different context from that involved in this grievance. Rule 10, reads in part:

"Rule 10. Where one shift its worked, or for the first one of two shifts, eight consecutive hours, exclusive of the meal period shall constitute a day's work. Except at Macom Junction Interlocking where two shifts are worked, the second shall immediately follow the first and be eight consecutive hours including thirty minutes for lunch. Where three shifts are worked, one shall immediately follow the other and each shift shall be eight consecutive hours including an allowance of thirty minutes for lunch."

Rule 10 indicates that where one shift is worked the meal period will not be included as part of the eight consecutive hours on duty, and while it does not define the length of meal period in such situations, the remainder of the Rule clearly defines the length of meal period to be a thirty minute period when it is included as a part of the eight consecutive hours on duty. When the language of Rule 10 is considered with the historical application, a strong presumption exists that the parties intended all meal periods to be 30 minutes in length.

Rules 11 and 12, when discussing meal periods, also discuss 30 minute meal periods. Search of the Agreement indicates that whenever the length of a meal period is specifically mentioned in time limit terms it is 30 minutes. Carrier has not demonstrated that anything but a 30 minute meal period has been the practice under the Agreement. As license to extend the meal period from 30 minutes to one hour, Carrier has relied upon Third Division Award 5800. Examination of that Award discloses that the Meal Period Rule in the Agreement involved there provided:

"The established meal period shall not be less than thirty (30) minutes nor more than one (1) hour unless mutually agreed to."

No such comparable language is found in the Signalman's Agreement on this property. The Board notes that such language is quite common in this industry.

Carrier has also relied upon Third Division Award 4851, noting among other things the Boards comment that:

"A meal period of 1 hour is not unusual in the railroad industry and we cannot say that Carrier acted unreasonably in so fixing it."

The Board acknowledges that this was factual then and is factual today. However, the evidence in this record demonstrates that a meal period of more than thirty minutes would be unusual under the Agreement on this Carrier.

Accordingly, it must be concluded that the Agreement was violated when Carrier changed Claimant's meal period from 30 minutes to one hour. The claim will be sustained. The remedy for the violation, though, will not be allowed in the form claimed. Claimant is not entitled to 2 hours and 40 minutes pay for each day of the violation. He is only entitled to thirty minutes compensation, at time and one-half rates, representing the extended period on duty as a result of the change in his meal period from 30 minutes to one hour.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin, Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.