

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32054
Docket No. CL-31956
97-3-94-3-109**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and Ohio
(Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11014) that:

(a) The Carrier violated the terms of the General Agreement and Memorandum thereto when on June 29 and July 6, 1992, it failed to provide Clerk R. A. Kerner with twenty minutes for lunch, in accordance with Rule 33; and,

(b) The Carrier shall now arrange to allow Clerk Kerner, ID 183098, an additional twenty minutes at the punitive rate of \$123.50 per day for the above dates.”

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 were given due notice of hearing thereon.

The Claimant is a Train Director at Queensgate Yard located in Cincinnati, Ohio. This position is within the coverage of the applicable Agreement. Claimant is scheduled on a "continuous" basis as provided in Rule 33, which reads as follows:

"RULE 33 - CONTINUOUS WORK WITHOUT MEAL PERIOD

For regular operations requiring continuous service, 8 consecutive hours without meal period shall be assigned as constituting a day's work, in which case not less than 20 minutes shall be allowed in which to eat without deduction in pay, with due regard to the requirements of the position."

"Requirements of the position" obviously gives the Carrier flexibility in determining when the 20-minute meal period "shall be allowed." There is also no dispute here before the Board that, despite an employee's request for a meal period, it may be necessary on occasion not to grant such time during the eight-hour day. According to the Organization's uncontradicted assertion, this is not an uncommon occurrence on the position of Train Director at Queensgate Yard.

On the dates in question, the Claimant was denied the opportunity for a 20-minute meal period. His claim for 20 minutes' pay at the punitive rate was denied.

The Organization fully demonstrated that on this property the remedy sought is considered entirely appropriate. The basis, of course, is that the employee works 20 minutes more than provided in the established schedule under Rule 33. It remains within the Carrier's control to avoid such extra payment by providing for the established meal period.

The Carrier offered the Board no reason to deny the payment, nor was any contrary practice cited. Thus, the Board need set forth no further support for the payment as requested.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of June 1997.