

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32089
Docket No. CL-32211
97-3-95-3-32

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11116) that:

1. The Carrier violated the Agreement when it refused to grant the regularly assigned Clerks working at the Tucson Yard Office a twenty (20) minute uninterrupted lunch period in violation of Rules 12, 14 and 15; and,
2. The Carrier shall now be required to compensate each employee at Tucson yard working 4 p.m. - 12 p.m., 12 a.m. - 8 a.m., Monday thru Sunday; each employee working 8 a.m. - 4 p.m., Saturday and Sunday, an additional twenty (20) minutes at time and one-half for the respective shift, beginning August 10, 1991, and continuing for each work day thereafter until the violation ceases."

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 dispute as set forth in the Statement of Claim, *supra*, had its beginning in August 1991, when Carrier moved its yard office forces to a new office building. In this new office building, there is a separate room in which clerical employees are permitted to eat their meals. Shortly after the opening of the new yard office facility and after Carrier experienced the theft of a considerable amount of equipment which was kept in the lunch room, Carrier elected to lock off the lunch room on other than the first shift, Monday through Friday, as well as on all shifts on weekends. The penalty claim which is found in this dispute concerns itself with those employees who work at the seven-day, 24 hour per day yard office on the second and third shifts and on weekends.

The Organization bases its claim on alleged violations of the provisions of Rules 12, 14 and 15 of the negotiated Agreement. The Agreement Rules which deal with the subject of meal periods on this property are as follows:

"RULE 12

LENGTH OF MEAL PERIOD

Unless agreed to by a majority of employees in a department or subdivision thereof, the meal period shall not be less than thirty (30) minutes nor more than one (1) hour; however, no meal period will be assigned employees between 8:00 P.M. and 7:00 A.M.; such employees shall be assigned eight (8) consecutive hours and accorded twenty (20) minutes, as provided in Rule 15."

"RULE 13

TIME OF MEAL PERIOD

(a) When a meal period is allowed, it shall be regularly assigned between the ending of the third (3rd) hour and the beginning of the seventh (7th) hour after starting work, unless otherwise agreed to by the proper officer of the Company and the Local Chairman. The meal period so assigned may be changed within the time limits provided, upon thirty-six (36) hours' written notice to employees affected.

(b) Except in emergency an employe shall not be required to work more than two (2) hours overtime continuous with and after completing eight (8) hours' service without being permitted twenty (20) minutes for meal period. Time taken for such meal period shall not break the continuity of service. If the employe is not accorded such meal period he shall be allowed twenty (20) minutes additional compensation at the rate of time and one-half.

(c) An employe who is required to work more than two (2) hours continuous with his regular eight (8) hour assignment may be granted twenty (20) minutes for meal period immediately prior or subsequent to the ending of his regular tour of duty, in which event he shall be compensated on a continuous time basis."

"RULE 14

WORK DURING MEAL PERIOD

(a) An employe required to work any part of the regular assigned meal period shall be paid for such time actually worked at the rate of time and one-half and shall be allowed the remainder of the meal period without pay; if the employe so elects, the remaining portion of his meal period may be extended equivalent to the time of his meal period worked, in which event the remaining portion of the assigned meal period and the extended time shall not be paid for.

(b) In the event an employe is called to work after having taken a portion of the regularly assigned meal period, time and one-half will be paid from time work is commenced until close of regularly assigned meal period.

(c) When as a result of having been required to work a part of the assigned meal period and that portion of the assigned meal period not worked is reduced to less than twenty (20) minutes, sufficient additional time, without deduction in pay, shall be allowed to afford a total of twenty (20) consecutive minutes in which to eat commencing not later than the beginning of the seventh hour after regular starting time.

(d) An employee required to work the entire assigned meal period shall be paid for the regular meal period at the rate of time and one-half and in addition shall be allowed twenty (20) minutes, without deduction in pay, in which to eat."

"RULE 15

CONTINUOUS WORK WITHOUT MEAL PERIOD

For regular operations requiring continuous hours, eight (8) consecutive hours without meal period may be assigned as constituting a day's work, in which case not to exceed twenty (20) minutes in which to eat shall be allowed when the nature of the work permits, at any time within the time limits provided for in Rule 13, without deduction in pay."

While Rule 13 is not specifically mentioned in this particular dispute, the Board has reproduced the language of *all of the negotiated rules which deal with meal periods* solely to demonstrate that the subject of meal periods has been given considerable thought and attention by the parties and is obviously a subject which is important to all of the parties.

The position of the Organization centers around Carrier's alleged denial of access to a lunch room for the employees who daily work on the second and third shifts and on the first shifts on weekends. The Organization argues that this denial of access to a lunch room facility creates a situation in which the Claimants did not have a 20-minute "uninterrupted" meal period and therefore a violation of the provisions of the above-referenced rules was created and those employees are thereby entitled to payment of 20 minutes at the time and one-half rate for each day so denied. The Organization cites with favor Third Division Awards 2855, 3943, 8194, 17035 and 21029 which, they say, stand for the principle that a paid-for 20-minute meal period must be "uninterrupted." The Organization further argues that this dispute involves the issues of equity and fairness in that the lunch room is available only for those employees who work on the day shift Monday through Friday, but is not available to other employees at the same facility who work on other shifts and on weekends. This, they say, violates the spirit, meaning and intent of the meal period Rules. In further support of their position in this dispute, they submitted written statements from seven of the employees here involved which, they say, support their contention that the meal period was repeatedly interrupted and therefore violated.

The position of the Carrier is that there is no provision in the Agreement which stipulates that the 20-minute meal period must be uninterrupted, nor does the Agreement demand that a separate lunch room in which to eat must be provided. Carrier belatedly admitted that the employees here involved could have had access to the lunch room by the simple task of asking the on-site Supervisor for the key to the room. Therefore, they say, access was not, in fact, denied to the employees.

From the Board's review of the dispute and after considering the various presentations of the parties, it is struck by the absence of the word "uninterrupted" in the several negotiated meal period Rules. The parties obviously gave considerable thought to these negotiated Rules. They painstakingly addressed the issues of length of meal period, time of the meal period, work performed during the meal period and continuous work without a meal period, and yet apparently did not feel the need to stipulate that the meal period should be uninterrupted or that a separate lunch room facility should be provided.

Having said that, however, the Board is confronted in this dispute with three separate and well-established principles which must be considered when making a determination on this claim. First is the principle that material assertions made by either party on the property which are not refuted, rebutted or denied on the property must be accepted as established fact. Third Division Awards 25358, 20083 and 11660, among others, so hold. Second is the principle that the actions of the parties in the on-going application of a Rule constitutes convincing evidence of the meaning and intent of the negotiated Rule. Third Division Awards 20514 and 14405, among others, have so held. Third is the principle that prior awards of this Board involving the same or similar issues should be controlling unless those Awards are shown to be palpably erroneous. Third Division Awards 25856, 24469 and 24047, among others, so hold.

As to the first principle, this case record contains not one, but two separate material assertions from the respective parties which were not contradicted or denied by the other party during the on-property handling of the dispute. The first of these assertions is from the Organization and is found in the seven written statements from certain of the Claimants which were presented to the Carrier and not rebutted by the Carrier. These statements, while acknowledging that meal time was, in fact, allowed, made the unrefuted contention that the meal time was "constantly interrupted." The second material assertion is from the Carrier in which Carrier candidly acknowledged that "the Chief Clerk and the Trainmaster at Tucson had a key to the lunch room, and anyone wishing to eat their lunch in the lunch room could have done so at the mere

asking." No response to this assertion was made by the Organization. Both of these material assertions stand unrefuted and are therefore accepted as established fact.

The second principle here involved goes to the intent of the Rules as evidenced by the actions of the parties under the Rules. The case record indicates that prior to the move to the new yard office facility, the employees were provided with a lunch room "where we could get away from the stress of work for 20 minutes." After the move was made to the new yard office facility, the employees were, in fact, provided with a lunch room. Even after the employees on the second and third shifts and on weekend were locked out of the lunch room, the first shift employees continued to be provided with a lunch room. The Carrier representative's acknowledgment during the on-property handling of this dispute that "anyone wishing to eat their lunch in the lunch room could have done so at the mere asking" clearly demonstrates that the intent of the Carrier was and is to provide a lunch room for employees at this location to eat their meals.

The third principle goes to the contention that the meal period should be uninterrupted. As previously noted, the Rule makes no mention of the term "uninterrupted." However, this Board has previously examined Rules which are, in all significant respects, substantially the same as the Rules here involved and has held on several occasions that the 20-minute meal periods contemplated by the meal period Rules must be "consecutive in nature" (Award 21029). In Award 17035, the Board held that "the twenty minutes referred to in Article VII (a) means twenty consecutive minutes." Award 8194 held similarly when it ruled that "such time allowed for eating the one meal involved can only contemplate one period of time, not the sum total of what might well be insignificant time periods." This Board does not find any of these prior decisions to be palpably erroneous and therefore accepts them as precedent for the principle that 20-minute meal periods such as involved here must be 20 consecutive minutes. "Consecutive" by definition means "following in uninterrupted succession."¹

Therefore, it is the conclusion of the Board in this case that there is substantial probative evidence to support the conclusion that, on this property at this location, Carrier has and does provide a lunch room facility for its yard office employees. The uncontroverted evidence also supports the conclusion that the 20-minute meal periods which were taken outside of the lunch room were not consecutive (uninterrupted) in nature. The uncontroverted evidence also supports the conclusion that after the Carrier's

¹Funk & Wagnall's New Comprehensive Dictionary.

acknowledgment that the employees could use the lunch room "at the mere asking," there was no further denial of access to the facility and no further viable reason for the employees experiencing an interrupted 20-minute meal period. Finally, the prior Awards which have been issued by this Board stand for the principle that the 20-minute paid for meal period provisions in Rules such as those involve in this dispute must be 20 consecutive minutes.

Therefore, it is the conclusion of the Board in this case that the claim as outlined in the Statement of Claim should be sustained as presented, but only until the date of Carrier's letter acknowledging that the lunch room was available for all to use for the asking. After that date, there was no Carrier violation of the Agreement Rules and claims after that date are denied.

AWARD

Claim sustained in accordance with the Findings.

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 9th day of July 1997.