

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39502
Docket No. MW-37962
09-3-NRAB-00003-030387
(03-3-387)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to properly compensate the Gang 9086 Group 26 (c) Track Machine Operators for their overtime hours on July 19 and 20, 2002 (System File C-0233-111/1336392).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants, Gang 9086 Group 26 (c) Track Machine Operators shall now ‘. . . each be allowed one (1) hour of pay for July 19, 2002 at double time, times double the existing rate, as well as twelve (12) hours of pay at their double time rates of pay, respectively, (less the twelve hours of straight time that they did receive), for July 20, 2002. . . .”

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 Claimants have all established and hold seniority as Group 26 (c) Track Machine Operators in the Track Sub-department. They were all regularly assigned as such on Gang 9086, surfacing and lining track at Missouri Valley, Iowa, on the Omaha Subdivision on the date in question.

A dispute arose after the Claimants were allegedly released from duty on July 19, 2002. According to the Carrier, the Claimants were released from duty at 10:30 P.M., at which time Supervisor Hildreth offered to buy dinner at a local restaurant. One gang member stated that his shift ended at 10:45 P.M. and he did not have eight hours of rest prior to his next shift, which began at 6:30 A.M. Supervisor Hildreth paid for dinner with the Carrier's credit card and the meal was completed at approximately 11:25 P.M. The Claimants had not received their final meal break during their shift on July 19.

The Organization contends that the Agreement was violated when the Carrier did not grant the Claimants eight hours of rest time between shifts. According to the Organization, the shift ended at 11:25 P.M., upon completion of dinner, and their next shifts began less than eight hours later. The fact that the Carrier did not grant the Claimants a meal during their shift is substantiated by the fact that the Carrier paid the Claimants triple time for the last four hours of July 19, 2002. The Organization claims that the Carrier must pay the Claimants double time pay for July 20, 2002 because they were denied the eight hours of required rest between shifts.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. It first contends that there is a conflict of fact in

that Supervisor Hildreth contends that he released the Claimants at 10:30 P.M. and then offered to buy them dinner on their own time. The claim of one Claimant that he worked until 10:45 P.M. and then ate on Company time is a conflict in fact that cannot be resolved by the Board. Therefore, the claim must be dismissed. However, the Carrier also contends that the Claimants were properly paid triple time for the last four hours of their shifts because of the lack of a meal period and were subsequently provided the appropriate eight hours of rest prior to their next shift. There was no violation and the Carrier asks that the claim be denied.

After a review of all the facts and circumstances in this case, we find that the Carrier did not violate the Agreement. The Claimants were paid properly, released at 10:30 P.M., and returned to work on the following day at 6:30 A.M. after the required eight hours of rest. The meal paid for by Supervisor Hildreth was voluntary and did not infringe upon the Claimants' tour of duty. Thus, there was no contractual violation and the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of February 2009.

LABOR MEMBER'S DISSENT
TO
AWARD 39502, DOCKET MW-37962
(Referee Bierig)

The Majority erred in its findings of this case and a Dissent is required. The basic facts are not in dispute. The members of Gang 9086 went on duty at 6:30 A.M. on July 19, 2002 and worked until 10:30 P.M. During the sixteen (16) hours they were on duty the Claimants were afforded one (1) meal period. One would only have to imagine the frustration of working such a long shift without being afforded an additional meal period. Nevertheless, the Carrier was clearly obligated to provide an additional meal period and the time to eat the meal. Rule 32 Meal Periods was cited in the correspondence and within our submission and clearly provided that the Carrier was obligated to feed employees who worked more than six (6) hours past their regular meal period. Rule 32(e)(1) states:

“RULE 32 - MEAL PERIODS

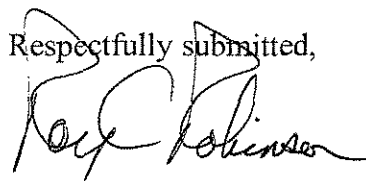
* * *

(e) When employees are required for overtime service, they will be accorded subsequent meal periods as specified hereinafter:

- (1) Employees required to work overtime following and continuous with their regularly assigned hours **will be accorded a meal period during said overtime service** within six (6) hours from the end of the regularly scheduled meal period. No meal period need be allowed when employees are released from work and returned to their home station, headquarters location, or outfit cars within three (3) hours after their assigned quitting time. Subsequent meal periods will be granted at six (6) hour intervals with it being understood the six (6) hour, interval period would begin to toll at the end of the last meal period allowed.” (Emphasis added)

There is no dispute that the Claimants went on duty at 6:30 A.M. on July 19, 2002 and the first meal period was taken between the ending of the third hour and the beginning of the sixth hour of work that day. Hence, the second meal period was required by Rule to be taken after more than six (6) hours after the first meal period was taken. It is simply hard to imagine the Majority's findings that "The meal paid by Supervisor Hildreth was voluntary and did not infringe upon the Claimant's tour of duty." when Rule 32(e)(1) clearly states that the employees would "... be accorded a meal period during said overtime service within six (6) hours from the end of the regularly scheduled meal period. ***" It is truly difficult to comprehend that the Majority would blindly parrot the same nonsense that was put forth by the Carrier and gratuitously state that the meal period they were allowed was merely "voluntary". Had the Carrier paid the Claimants while they were observing their contractually mandated second meal period as Rule 32 required, their time would have stopped after the meal was finished and the Carrier would have been required to compensate the Claimants as outlined in Part 2 of the Claim. The Majority ignored the crystal clear language of Rule 32 and this Award shall not stand as precedent.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roy C. Robinson". The signature is fluid and cursive, with the first name "Roy" being more prominent.

Roy C. Robinson
Labor Member