

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40371
Docket No. MW-40711
10-3-NRAB-00003-080561**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly compensate the employees assigned to System Gang 8514 for their overtime service on March 12, 2007 (Carrier’s File 1477299).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants, all employees assigned to System Gang 8514 on March 12, 2007, shall now ‘. . . each be compensated 5 1/2 hours at double the existing straight time rate of pay and 3 hours at double overtime rate of pay for the denied meal periods as provided for in Rule 32 of the Collective Bargaining Agreement. ***”**

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.

According to the Organization, on March 12, 2007, System Gang 8514 was working a 7:00 A.M. to 5:30 P.M. work schedule observing lunch between 12:00 P.M. and 1:00 P.M. On that date, the gang made a 44 mile move on the Lynndyl Subdivision, Salt Lake City, Utah, from Mile Post 736.0 to Mile Post 780.0. The claim here is that System Gang 8514 was denied a meal period under Rule 32.

The Carrier responds with a statement from Track Supervisor W. Allen:

“Employees of the 8514 System Curve Gang have always been afforded an opportunity to eat.

The meal period is allowed in compliance of BMWED Rule 32.

All gang employees are aware that their meal period is to be taken. They are also aware, that many times, they will not be told exactly when to eat. Due to the size of the Gang and the scope and nature of their work, it would be impractical, and often impossible for all employees to take a meal period at exactly the same time everyday. Nevertheless, all are and were able to take their meal period.”

The burden to demonstrate all elements of its claim falls on the Organization. It asserts that the employees on System Gang 8514 were denied the ability to take their meal period on the claim date. The Carrier, through the statement of Supervisor Allen, refutes that assertion and states that employees were free to take their meal period. The record is therefore in conflict. But the burden of proof is on the Organization. A record in conflict on the material facts cannot support a sustaining award.

This claim shall therefore be denied.

Form 1
Page 3

Award No. 40371
Docket No. MW-40711
10-3-NRAB-00003-080561

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 25th day of March 2010.