

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40392
Docket No. MW-40575
10-3-NRAB-00003-080395**

The Third Division consisted of the regular members and in addition Referee Sherwood Malamud 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 8564 for their time in connection with not being afforded their meal period between 7:00 A.M. and 10:00 A.M. on August 6 and 7, 2006 (Carrier’s File 1462735).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants, all employees assigned to Gang 8564 on August 6 and 7, 2006, shall now each be compensated for a total of six (6) hours at double their existing straight time rate of pay.”**

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 are all 47 members of Gang 8564 on August 6 and 7, 2006. The Organization asserts that the Carrier violated Rule 32 (a) and Rule 32 (e) (6) when it failed to provide a meal period between the end of the third hour and the beginning of the sixth hour after starting work. Gang 8564 was working a compressed half, 11.5 hour work days at the time, from 4:00 A.M. to 4:30 P.M. No overtime hours are associated with the work schedule of the Claimants on these two days.

The Organization concedes that the Carrier provided a meal period for all Gang members. It claims that the meal period was not afforded within the time limit specified in Rule 32. The meal period should have been provided between 7:00 A.M. and 10:00 A.M. on both days. The Gang took lunch at 1:30 P.M. on August 6 and at 12:30 P.M. on August 7, 2006.

The Carrier correctly notes that the factual circumstances of this case are governed by Rule 32 (a) and Rule 32 (b). Because the Gang was not working overtime on August 6 and 7, the provisions of Rule 32 (e) (6) are inapplicable to this factual setting. The pertinent provisions of Rule 32 are as follows:

- “(a) Where a meal period is allowed it will be between the ending of the third hour and the beginning of the sixth hour after starting work. The regular meal period will not be less than thirty (30) minutes or more than one (1) hour.
- (b) If the meal period is not afforded within the time limit specified in Section (a) and is worked, the meal period will be paid for at the pro rata rate and twenty (20) minutes with pay in which to eat will be afforded at the first opportunity.

* * *

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

* * *

- (6) In the event a meal period is not afforded at the designated time, the employees will be compensated at double their existing rate of pay from that time until such time as they are accorded a meal period; there will, however, be no compounding of the penalty payments provided herein."

The Board concurs with the Carrier's assertion that Rule 32 (e) (6) by its terms applies to overtime service, a factual setting not present in this case. Rule 32 (b) applies. The Carrier admits that the meal period for some members of the Gang was delayed beyond 10:00 A.M. It asserts that they were paid in accordance with Rule 32(b).

The Organization bears the burden of proof. (See Third Division Awards 31230 and 31930. It failed to submit sufficient evidence to establish whether the Carrier failed to pay the Claimants or some of the Claimants in conformance with Rule 32 (b). Accordingly, the instant claim must be 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 25th day of March 2010.