

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY**

**THE CHICAGO, ROCK ISLAND & GULF RAILWAY
COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of foremen and section laborers employed on Sections 8, 10 and 11, Roadmaster Williams' district, Missouri-Kansas Division, who, on June 21, 28 and July 7th, 1938, were required to work forty minutes during the allowed meal period, that under the application of Schedule Rule 23, they be paid one hour at pro rata rate for such service, in addition to the twenty minutes afforded them to eat."

EMPLOYEES' STATEMENT OF FACTS: "On June 21, 1938, section crews on Sections 8, 10 and 11, Roadmaster Williams' district, Missouri & Kansas Division, were consolidated for the purpose of unloading cinders. Foremen and laborers of these consolidated section crews were instructed by the track supervisor to work during the noon hour; the noonday meal period being fixed from 12:00 noon until 1:00 P. M. They were directed to take 20 minutes in which to eat their lunch—from 12:00 noon until 12:20 P. M., which they did, resuming work at 12:20 and working the remaining forty minutes of the noon hour, and the balance of the day.

"The Agreement, effective May 1, 1938, copies of which are on file with this Board, is by reference made a part of this Statement of Facts."

POSITION OF EMPLOYEES: "Rule 23 of Agreement in effect reads:

'Rule 23. Meal Period. Unless acceptable to a majority of the employes directly interested, the meal period will be not less than thirty (30) minutes nor more than one hour.

If the meal period is not afforded within the allowed or agreed time limit and is worked, the meal period will be paid for at pro rata rate and twenty (20) minutes with pay in which to eat will be afforded at first opportunity.

For continuous service where two or more shifts of eight (8) hours each are worked, as the requirements of the service demand, not to exceed twenty (20) minutes will be allowed, in which to eat, without deduction in pay. If an employe by mutual agreement with his superior elects to take longer than twenty (20) minutes, no pay will be allowed for any time taken for meal period.'

POSITION OF CARRIER: "Rule 23 of the Maintenance of Way agreement of May 1, 1938, reads, in part:

'MEAL PERIOD. If the meal period is not afforded within the allowed or agreed time limit and is worked, the meal period will be paid for at pro-rata rate and twenty minutes with pay in which to eat will be afforded at first opportunity.'

"This rule has been in effect for many years, and in accordance with present and past practice, the application never being questioned, the actual time of the meal hour that is worked has been paid for at pro-rata rate on a minute basis, with the understanding that if the twenty minutes' time during the limits of the time designated for the meal hour is not allowed for meal then sufficient time outside of the meal hour is allowed, with pay, to permit the employe to have a full twenty minutes' lunch period. In these particular instances the men involved were allowed a meal period of twenty minutes within the regular time limit and they were paid at pro-rata rate for the balance of the time worked. If these gangs had worked a total of sixty minutes in the regular assigned time for meal they would have been paid 60 minutes and then allowed 20 minutes in which to eat on pay.

"The employes are claiming a full hour's time at pro-rata rate for the 40 minutes worked. On the other hand the rule says the pay will be at pro rata rate.

"The employes were allowed a meal period within the agreed time limit, and paid on the minute basis at pro-rata rate for the balance of the time worked during the meal hour period. This practice has been in effect for many years, without previous protest, and we maintain no rule was violated in the method of payment in the instant case. Claim should be denied."

OPINION OF BOARD: Carrier contends that by allowing twenty (20) minutes to eat within the allowed time for meal period instead of before or after such time, that they are not required to pay for such twenty (20) minutes. However, Rule 23 does not say that "it is necessary to work the entire meal period before it will be paid for." The meal period here was one hour, 40 minutes of which was worked. Rule 23 says 20 minutes will be allowed at first opportunity. The period granted was evidently the first opportunity. The first half of the rule says the meal period will not be less than 30 minutes or more than one hour, which shows that it was intended to allow a certain time for meal period in which to eat, and that if that amount of time was not allowed the Company would allow 20 minutes with pay in which to eat, and pay pro rata rate for "the meal period."

Although the assertions of the parties as to past application of the rule are squarely opposed the preponderance of evidence indicates that this is an effort on the management side to impose a new interpretation on the rule. The organization says it has always heretofore been construed in accordance with the claim here; and they show 13 instances from 2 foremen alone in the 2 years preceding a circular dated October 12, 1938 (of record) which states "There seems to be a general misunderstanding as to the proper application of Rule 23." and proceeds to prescribe the interpretation here asserted by the carrier. The carrier with the payrolls in its possession failed to show a single instance of such application prior to the circular.

On its face such a construction would render the rule quite inconsistent; under it if the 20 minutes was allowed any time either before 12:00 or after 1:00 the carrier would pay 9 hours at pro rata rate for 8 hours 40 minutes work but if the 20 minutes was allowed between 12:00 and 1:00 it would pay only 8 hours and 40 minutes pro rata rate. No reason is suggested for any such difference. It requires further, definitely changing the language of the rule to reach such a construction; the rule says "the meal period will be paid for at pro rata rate"; the carrier would change it to provide that if any

portion of a meal period is not afforded within the agreed time, the **pro rata** of time worked would be paid for at pro rata rate.

Such would constitute a substantial change in the rule.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the employees in question are entitled to pay for entire meal period under Rule 23.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1939.