

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DELAWARE AND HUDSON RAILROAD**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that John J. Young, Plumber, B&B Gang No. 7, Oneonta, New York, be paid the overtime rate on March 22, 1940 for work performed during the meal period from 12:00 to 1:00 P. M. and overtime rate from 4:00 P. M. to 6:00 P. M. on the same date.

EMPLOYEES' STATEMENT OF FACTS: On March 22, 1940 Mr. Young reported for work at 7:00 A. M. at his regular starting point for his daily assignment and was on duty continuously until he was returned to his regular assembling point at 6:00 P. M. He was incorrectly paid for time worked in excess of his regular assigned hours.

An agreement is in effect between the parties bearing effective date of July 1, 1939, which, by reference, is made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The current agreement between the parties contains the following rules, which the Employees contend support their claim in this case:

"MEAL PERIOD

Rule 17 (b) When a meal period is allowed, it will be between the ending of the fourth hour and the beginning of the seventh hour after starting work. When the meal period is not afforded within the allowed or agreed time limit and is worked, it shall be paid for at the overtime rate and sufficient time will be allowed in which to eat when conditions permit. Employees will not be required to work an unreasonable number of hours without a second meal period. The established meal period shall not be less than thirty (30) minutes nor more than one (1) hour."

This rule provides that when a meal period is worked employees shall be paid for such time at the punitive overtime rate.

The Carrier and the Employees are in accord as to the application of the above rule. This is supported by the decision of Mr. F. L. Hanlon, Chairman, Board of Disciplining Officers, under date of January 10, 1941, which we quote:

"Meal period was not provided and time between 12:00 N. and 1:00 P. M. will be paid for at overtime rate. Time between 4:00 P. M. and 6:00 P. M. was traveling time and paid for as such."

The claimant in this dispute was not relieved from actual duty until he returned to his designated assembling point. He was charged with the responsibility of seeing that the company's tools and motor car were safely put away and until that had been done he could not be considered as having completed his day's work.

CARRIER'S STATEMENT OF FACTS: On March 22, 1940, John J. Young went to work at Oneonta at 7:00 A. M. and was off duty at Oneonta at 6:00 P. M. This employe worked during his meal period, which has been paid for at the overtime rate. Time between 4:00 and 6:00 P. M. was traveling time. He was, therefore, entitled to 10 hours at straight time rate and 1 hour at overtime rate.

POSITION OF CARRIER: The principle involved in this case is the same as that involved in Case No. 21.40 MW and ex parte submission of the Carrier on Case No. 21.40 MW is being forwarded herewith. Management submits the argument and evidence presented in Case No. 21.40 MW to sustain its position in Case No. 22.40 MW.

OPINION OF BOARD: The subject of this dispute is identical with that contained in Docket MW-2238, Award 2304, and is governed thereby.

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 employe involved in this dispute are respectively carrier and employe 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 claimant was properly compensated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of September, 1943.