

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mr. Kendall Green be paid one hour at pro rata rate for meal period not afforded within the allowed time limit December 2, 1940, under the provisions of Rule 47 of Agreement effective September 1, 1926.

EMPLOYEES' STATEMENT OF FACTS: Mr. Green holds assigned position as Water Service Helper, headquarters Dunsmuir, California, assigned working hours 7:30 A. M. to 12 Noon—1:00 P. M. to 4:30 P. M.

December 2, 1940, Mr. Green reported for work at Dunsmuir at the regular starting time, 7:30 A. M. He worked until 11:15 A. M. when he was instructed to proceed to Gerber to perform work, departing on Train No. 15 at 11:25 A. M. and arriving Gerber 2:37 P. M., then working until 4:30 P. M.

Claim for 8 hours was made by Mr. Green to cover regular assigned work period and one (1) hour at pro rata rate to cover meal period (12 Noon to 1:00 P. M.) which was not afforded within the allowed or agreed time limit. Claim for the one (1) hour at pro rata rate to cover meal period was not allowed.

By letter dated December 21, 1940, (Employees' Exhibit "A") the Division Chairman presented to Carrier's Division Superintendent request that the claimant be paid one (1) hour pro rata rate under the provisions of Rule 47 for meal period not allowed December 2, 1940, within the allowed or agreed time limit.

By letter dated January 28, 1941, (Employees' Exhibit "B") Carrier's Division Superintendent advised Division Chairman that the claim was declined.

By letter dated February 25, 1941, (Employees' Exhibit "C") claim was presented by the General Chairman on appeal to Carrier's Assistant Manager of Personnel.

By letter dated March 20, 1941, (Employees' Exhibit "D") Carrier's Assistant Manager of Personnel declined the claim advising that Rule 47 was not applicable to the circumstances. Conference was held June 18, 1941, between the General Chairman and Carrier's Assistant Manager of Personnel and Carrier's declination of claim was re-affirmed.

By letter dated November 16, 1942, (Employees' Exhibit "E") addressed to Carrier's Assistant Manager of Personnel General Chairman requested the Carrier to join with the Brotherhood in submitting the dispute to the Third Division, National Railroad Adjustment Board.

4. On December 21, 1940, the petitioner's division chairman submitted a claim on behalf of the claimant to the carrier's division superintendent (Exhibit "A") for additional compensation, namely, one hour at pro rata rate for meal period from 12:00 noon to 1:00 P. M. December 2, 1940. By a letter dated January 28, 1941 (Exhibit "B") the said claim was declined by the division superintendent.

5. By a letter dated February 25, 1941 (Exhibit "C") the petitioner's general chairman appealed the claim mentioned in paragraph 4 to the carrier's assistant manager of personnel, who declined it in a letter dated March 20, 1941 (Exhibit "D").

The claim was subsequently discussed in conference by the petitioner's general chairman and the carrier's assistant manager of personnel on June 18, 1941, at which time the latter again declined the claim.

POSITION OF CARRIER: The petitioner in its statement of claim alleges that the claimant ". . . be paid one hour at pro rata rate for meal period not afforded within the allowed time limit December 2, 1940, under the provisions of Rule 47 of Agreement effective September 1, 1926."

Rule 47 of the current agreement is as follows:

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

The carrier submits that Rule 47 of the current agreement is not applicable to the claim involved in this docket for the reason that the said rule provides for compensation only "If the meal period is not afforded within the allowed or agreed time limit, and if worked," (Emphasis ours.)

The claimant did not work during his assigned meal period from 12:00 noon to 1:00 P. M., December 2, 1940, but was traveling during said period on train No. 15 en route from Dunsmuir to Gerber. Traveling has not at any time, under the circumstances that existed here, been considered or construed as working.

Rule 51 of the current agreement provides:

"Except as otherwise provided in these rules, only the hours between the beginning and release from duty, exclusive of the meal period shall be paid for."

With the exception of Rule 47, considered above, no other rule of the current agreement provides for payment for the meal period and having conclusively established that said Rule 47 is not applicable, the carrier submits that the claim in this docket cannot be supported by any provision of the current agreement.

CONCLUSION

The carrier submits that it has conclusively established that the alleged claim in this docket is entirely without merit, and, therefore, respectfully submits, that it is incumbent upon the Board to deny it.

OPINION OF BOARD: On Dec. 2, 1940, the employe reported for duty at his home station, Dunsmuir, at 7:30 in the morning, worked there until 11:15 and was then instructed to proceed to Gerber where he worked until 4:30, his regular quitting time, and where he remained on duty for two or three days. He was on a passenger train enroute from Dunsmuir to Gerber from 11:25 A. M. to 2:37 P. M., which included his usual noon lunch hour. The claim is that he is therefore entitled to pay for the noon hour under Rule 47 which provides as follows:

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

It will be noted that the rule prescribes two prerequisites to the claim. First, "If the meal period is **not afforded** within the allowed or agreed time limit" (which under Rule 46 is to be between the end of the third hour and the beginning of the sixth hour of his shift, in this instance between 10:30 and 12:30 P. M.) and second, "If worked" which obviously means if the period is taken up by work.

The argument has been devoted mainly to the question whether the travel period is to be considered as "worked" within the contemplation of Rule 47; but it is not necessary to consider that question, for the record fails to show that the meal period was "not afforded."

Obviously the purpose of the rule was to assure (1) that there should be no unnecessary interference with the meal period required by Rule 46 and (2) that if it were interfered with by required work, not only should the period be paid for but the first available twenty minutes should be afforded in which to eat, without deduction of pay.

The rules do not require that the meal period must be afforded off the property, or off the train, or on a train which is not in motion; and the fact that the time was spent on a moving train does not in itself show that the meal time was not afforded. The employee's time on the train was not taken up by work so he had no opportunity to eat. On the contrary, the record shows that no work was required of him which would interfere with his freedom to use the hour for meal purposes.

The remainder of the travel time, which consumed over two and one-half hours of his regular shift, was compensated on the regular pay basis. Whether or not, as a general rule, travel time during an employee's shift is to be paid for as work, the rules do not provide that the lunch hour, if it involves travel, shall be paid for unless thereby the "meal period is not afforded,"—in other words, unless thereby the availability of the period for lunch purposes is interfered with. Indeed, they actually provide otherwise, for Rule 51 provides that "except as otherwise provided in these rules, only the hours between the beginning and release from duty, **exclusive of the meal period** shall be paid for." To bring the result contended for in this claim the words, "exclusive of the meal period," would have to be changed to "exclusive of the meal period unless the latter is used in traveling" which this Board has no power to do.

There may have been additional circumstances under which the incident actually deprived the employee of his meal period by interfering with his use of it as such, as perhaps by the lack of eating facilities enroute and the want of sufficient notice to permit the employee to take his lunch with him. On the other hand he may have had his lunch with him, or lunch facilities may have been available enroute during the time required by Rule 46, in which case it cannot be said that the meal period was not afforded him. If eating facilities were physically available enroute, they cannot be said to have been financially unavailable, since the employee was being held out over night and therefore seems to have been entitled to his "actual and reasonable expenses for board and lodging" under Rule 36 (d). But at any rate, the record affords no basis for the conclusion that the meal period was not afforded Claimant in this instance.

No award has been submitted or found holding contrary to what has been said above and the claim must be denied.

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 there has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1944.