

Award No. 2856
Docket No. CL-2780

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) Carrier is required by Rule 29 to allow employees, who are assigned to work 8 consecutive hours, twenty (20) minutes in which to eat without deduction in pay, or make appropriate pay allowance in lieu thereof; and that
- (2) Miss Annie Mae Doucet, Telephone Operator, Lafayette, be allowed pro rata payment for twenty (20) minutes on September 1, 1942, and on each succeeding date upon which she worked 8 consecutive hours, in lieu of time not allowed in which to eat as required by Rule 29.

EMPLOYES' STATEMENT OF FACTS: Miss Annie Mae Doucet, Telephone Operator, Lafayette, was employed for regular operations requiring continuous hours in the Lafayette Telephone Exchange, on September 1, 1942 and thereafter to a date unknown. In the period involved, she was regularly assigned to work from 6:00 A. M. to 2:00 P. M., 8 consecutive hours as per Rule 29, the rule reading:

“RULE 29. CONTINUOUS WORK WITHOUT MEAL PERIOD.
For regular operations requiring continuous hours, eight (8) consecutive hours without the meal period may be assigned as constituting a day's work, in which case not to exceed twenty (20) minutes shall be allowed in which to eat without deduction in pay, when the nature of the work permits.”

As the Carrier puts it, “under existing conditions it is not possible to close the Telephone Switchboard at Lafayette during any portion of Miss Doucet's assignment.” Miss Doucet therefore was not at liberty to forego the performance of her duties for twenty (20) minutes for the purpose of eating. Specifically, there was no time within her assigned hours when the nature of the work permitted her to take her minutes. She was not allowed twenty (20) minutes in which to eat, nor was she allowed compensation in lieu thereof in any of the period for which this claim runs. Her claims for payment in lieu of twenty (20) minutes in which to eat not allowed were declined by Mr. M. O. Scobee, Superintendent of Telegraph, in his letter of December 18, 1942, quoted in full below.

In discussing this case in conference, reference was made to Award 1590 of this Division. In that case the rule quoted in the Position of the Employes, provides that the twenty minutes shall be allowed between the end of the fourth and sixth hour after starting time, with due regard for the requirements of the position. There is no such provision in Rule 29 of the Clerks' Agreement in effect on these lines. Our rule simply provides that they will be allowed twenty minutes in which to eat without deduction in pay when the nature of the work permits. The claim in that case was that Chief Yard Clerk should be paid one hour overtime until he was assigned eight consecutive hours without a meal period and it was denied.

There is no rule in the current agreement that provides for the payment claimed in this case.

CONCLUSION: The carrier has shown that the claim has not been handled in the usual manner, as required by the amended Railway Labor Act and the rules of the agreement and should therefore be dismissed. Without prejudice to its position in that respect, the carrier has also conclusively established the fact that the alleged claim is entirely without merit and if not dismissed in toto, should be denied.

OPINION OF BOARD: The controlling facts here are: The Claimant Employe, Annie Mae Doucet, was employed as a PBX Telephone Operator at Lafayette. The position she held was on requiring continuous hours, her assignment being from 6:00 A. M. to 2:00 P. M. It is the contention of the Employes that she was not allowed the twenty minutes to eat her lunch, as provided for in Rule 29. The principle involved in this dispute is identical with that in Docket CL-2779, Award No. 2855.

The record shows that although she commenced work on Sept. 1, 1942, no claim was made until Nov. 30, 1942. Claimant is entitled to be allowed pro rata payment for 20 minutes on Nov. 30, 1942, and on each succeeding date upon which she worked eight consecutive hours, in lieu of time allowed in which to eat as required by Rule 29.

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 Employes 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 was a violation of the current Agreement.

AWARD

Claim sustained as per the Opinion and Findings, from Nov. 30, 1942.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of March, 1945.