

Award No. 3012

Docket No. MW-3023

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

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

(1) That the carrier violated Rule 14 (f-1) and (h) when it assigned Bridge and Building Foreman J. V. Reynolds, Little Rock Division, to work from 8:00 A. M. to 4:00 P. M. without a meal period from April 7 to 24, 1944, inclusive;

(2) That J. V. Reynolds shall be paid for one additional hour on each day worked during the period from April 7 to 24, 1944, inclusive.

EMPLOYEES' STATEMENT OF FACTS: J. V. Reynolds was regularly assigned as bridge and building foreman, Little Rock Division. As evidenced by bulletin Dated March 2, 1944, by G. P. Walker, bridge and building supervisor, reading:

"Monroe, La., Mar. 27, 1944.

Messrs. F. C. Bernard
H. P. Bryant
I. Skinner
F. M. Cottingham
H. T. Cunningham
A. Martin
J. C. Yarbrough
T. R. Brooks
W. R. Wimbish
H. L. Moore
W. P. Elliott
T. C. Davis
R. B. Spicer
J. M. Clawson

J. V. Reynolds
J. Valentine
B. R. McGowan
M. F. Luncford
L. R. Tillotsen
C. N. Adams
Lee Carter
E. E. Smith
C. N. Adams
C. Ferrell
O. Hampton

Effective April 1, 1944, will arrange to start working hours at 7:00 A. M. to 12:00 A. M. 12:00 to 1:00 P. M. for noon hour, afternoon hours 1:00 P. M. to 4:00 P. M.

Please govern accordingly.

G. P. Walker"

Bridge and Building Foreman J. V. Reynolds was regularly assigned to work from 7:00 A. M. to 4:00 P. M. with one hour off for lunch between the hours of 12:00 noon and 1:00 P. M.

On April 7th, Bridge and Building Foreman J. V. Reynolds in charge of pile driver operation was instructed to work from 8:00 A. M. to 4:00 P. M. without a meal period and worked in that manner from April 7 to 24, 1944, inclusive.

tinuous hours with 20 minutes for lunch without deduction in pay, and no complaint heretofore filed by the Complainant Organization that such action was violative of rules of the working agreement.

C—Copy of Foreman Reynolds' time rolls and distribution of hours worked during the month of April, 1944, which includes time of crew with pile driver during period April 7 to 24, 1944.

D—Letter dated April 24 from Chief Personnel Officer Roll to General Chairman Oholendt proffering settlement of this time claim on basis that Carrier was unable to positively support statement made by General Superintendent Fink, in his letter to General Chairman Oholendt dated June 20, 1944, that Mr. Reynolds was given 36 hours' notice prior to his starting to work on April 7, 1944; that his hours of service assignment had been changed from 7:00 A. M. to 4:00 P. M., less meal hour, to 8:00 A. M. to 4:00 P. M. with 20 minutes for lunch without deduction in pay.

E—Letter of General Chairman Oholendt, dated May 7, 1945, addressed to Chief Personnel Officer Roll, declining the Railroad's proffer of settlement as set forth in the Chief Personnel Officer's letter dated April 24, 1945.

OPINION OF BOARD: From April 7 to 24, 1944, inclusive, the Claimant's hours of service, which had been from 7:00 A. M. to 4:00 P. M., less a one-hour meal period, were changed to run from 8:00 A. M. to 4:00 P. M., with 20 minutes for lunch without deduction in pay. The claim is for one additional hour's pay at overtime rate for each day worked during the above period.

Doubt having arisen on the part of the Carrier as to whether it had given 36 hours notice of the change in starting time, as required by Rule 18, the Claimant was paid for two extra hours for April 7 and April 8. April 9 was Sunday, and the period here actually involved is, therefore, the days worked from April 10 to 24, inclusive.

There is not much basis for controversy as to the meaning of the Rules or their proper application to the facts of this case. It seems clear that in their usual and normal operation the Rules contemplate that eight consecutive hours, exclusive of a meal period, shall constitute a day's work (Rule 14-a); and that the employee shall ordinarily be allowed not less than 30 minutes nor more than an hour for his noon-day meal, which period shall not be counted in computing his day's work, (Rule 19). These meal-time privileges do not appear to be affected by the right of the Carrier to change the starting time, whether by agreement with the interested parties or upon 36 hours' notice (Rule 18).

To the above there is, however, one clearly expressed exception. This is found in the concluding paragraph of Rule 19 and reads:

"For regular operations requiring continuous hours, eight (8) consecutive hours without 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 nature of the work permits."

It is to be noted that the above exception is, by its terms, limited in its application to "regular operations **requiring continuous hours**" (emphasis supplied). The Rule does not purport to apply to irregular operations or to those that do not require continuous hours of service. Assuming that the work in which this Claimant was engaged during the period in controversy pertained to regular operations, there is no showing in the record that the nature of that work was such as to reasonably require continuous hours of service. In any event, it is apparent that the Carrier assumed the burden of justifying its conduct by reliance upon Rule 18, rather than by demonstrating that continuous hours of service were necessary, as it conceivably might have done.

To deny the claim would be to recognize absolute power on the part of the Carrier to nullify all of the provisions of the Agreement relating to the right of the employees to a 30-minute to one-hour meal period. Past practices, consistent with the Carrier's conduct in this instance, cannot have the effect of abrogating the express provisions of the Agreement.

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 Carrier violated the Agreement on each day worked by the Claimant from April 10 to 24, 1944, inclusive.

AWARD

Claim sustained as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 7th day of December, 1945.