Award No. 4944
Docket No. MW-4851

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE TEXAS AND PACIFIC RAILWAY COMMITTEE

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

(1) That the Carrier violated the Agreement by not compensating Section Laborers Manual Canaba, F. Garcia, J. A. Johnson and Jose Ledesma for one hour at time and one-half rate for having worked their noon hour on various dates in April, 1948;

(2) That the claimants be reimbursed for the difference received for forty (40) minutes pay at time and one-half and what they should have received for one (1) hour's pay at the time and one-half rate on the dates referred to.

EMPLOYES' STATEMENT OF FACTS: Section Laborers Manual Canaba, F. Garcia, J. A. Johnson and Jose Ledesma were regularly assigned as scection laborers at Toyah, Texas.

During the last period of April 1948, it was necessary for these section laborers to suspend their regular meal period while working to clear up a wreck at Hermosa, Texas. The section laborers, who are claimants in this case, were not afforded their one hour assigned meal period between the ending of the third hour and the beginning of the sixth hour after starting work as provided in Article 19 of the effective Agreement.

They were afforded twenty (20) minutes with pay in which to eat after the beginning of the sixth hour after starting work.

The assigned meal period which was worked is designated by the Management as being from 12:00 Noon to 1:00 P.M. The claimants were paid at the straight time rate of pay for this hour of service.

The Agreement in effect between the two parties to this dispute, dated April 1, 1945, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Article 14(a) and Article 14(h) and Article 19 of the Agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employes reads as follows:

"ARTICLE 14

"Hours of Service, Overtime and Calls

is not. If any part of the meal period is worked we are required to pay for the full period. In the case here at issue had only 20 minutes of the meal period been worked we would have been required under the rule to pay the full hour which would be the equivalent to double time for the actual time worked.

Your attention is directed to the employes' position in Award 922, as follows:

> "* * * to put it another way, on a day where the employes are required to work either the full meal period or 40 minutes thereof, and then are allowed 20 minutes in which to eat, they are actually rendering 8 hours and 40 minutes' service that day. Were those 40 minutes of service rendered at the end of the day, continuous with the regular 8 hour assignment, those 40 minutes of service would be paid for at the rate of time and one-half, or the equivalent of 60 minutes or 1 hour at pro rata rate. All of this makes it very clear that the second paragraph of Rule 23 provides that service performed during the meal period shall be paid for on the basis of time and one-half."

Also in the Opinion of the Board it is stated:

> "* * * 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.'"

In the case here at issue a part of the meal period was worked, 20 minutes was allowed in which to eat, and the entire meal period (one hour) was paid for.

We submit, first, that the rule does not support claim for time and one-half; and, second, that the allowance as made is equivalent to time and one-half for the time actually worked, and in many cases more than double time is allowed.

We submit that the claim herein is wholly unfounded and without merit, and respectfully request that it be denied.

Attached as Exhibit "A" is a copy of the Assistant General Chairman's letter dated September 1, 1948, appealing the claim. Attached as Exhibit "B" is a copy of the Carrier's letter dated September 22, 1948, to Mr. Foster declining the claim.

Exhibits not reproduced.)

OPINION OF BOARD: Claimants were regularly assigned from 8:00 A.M. to 5:00 P.M. with a meal period of one hour, 12:00 Noon to 1:00 P.M. Claimants worked their meal periods and were given 20 minute lunch periods in lieu thereof. They were compensated for one hour additional at the pro rata date. The Organization contends that these employes should have been paid eight hours at pro rata and one hour at time and one-half.

The rule governing the establishment of meal periods provides as follows:

> "(a) When a meal period is allowed, it will be between the ending of the third hour and the beginning of the sixth hour after starting work, unless otherwise agreed upon by the employes affected and the local supervisory officers. The meal period shall not be less than thirty (30) minutes, nor more than one (1) hour. If the meal period is not afforded between the third and the sixth hours, it shall

be paid for, and twenty (20) minutes time in which to eat shall be afforded at the first opportunity, with no deduction in pay."

Rule 19(a), current Agreement.

The Organization asserts that the 20 minute meal period allowed was outside of the third and sixth hours. The Carrier says that it was not. In any event, a meal period of 30 minutes to one hour was not afforded within the period prescribed by the Agreement. Consequently a regular, assigned meal period was not afforded and the 20 minute meal period must be paid for as the Agreement states. The 20 minutes, whether in or out of the limits prescribed for the allowance of a meal period, do not bring about a reduction of pay. These employes are entitled to be paid eight hours at straight time rate and one hour at time and one-half, the latter being work performed in excess of eight hours.

The Carrier asserts that the literal application of Article 14, current Agreement, defining overtime, does not bring it within the scope of that rule. for the reason that it describes overtime as "Time worked preceding or following and continuous with a regularly assigned eight (8) hours work period * * *." Such an interpretation is highly technical and clearly not within the intent of the parties. Under the rules cited, claimants worked nine hours. The one hour in excess of eight should be paid for at the time and one-half rate. An affirmative award is required.

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

That the Argreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1950.