

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Central Railroad Company of New Jersey that L. A. Morge, regular occupant of the Ticket Agent position at Elmora Avenue, Elizabeth, New Jersey, and other employees who may have occupied the position, who have not been afforded a meal period of one hour between the third and sixth hours after starting work, shall be paid at the pro rata rate for said meal periods not afforded retroactive to June 15, 1944, and currently so long as the practice continues.

EMPLOYEES' STATEMENT OF FACTS: An Agreement by and between the parties bearing effective date of June 15, 1944, hereinafter referred to as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Prior to June 15, 1944, the meal period rule (Rule 11) of the Telegraphers' Agreement provided that where but one shift is worked, employees will be allowed sixty (60) consecutive minutes between the ending of the fourth (4th) hour and the beginning of the seventh (7th) hour of each tour of duty for meal. Under that rule L. A. Morge, ticket agent at Elmora Avenue, Elizabeth, New Jersey, a one shift office, had been afforded a meal period 10:30 A.M. to 11:30 A.M. which complied with said Rule.

Effective June 15, 1944, the meal period rule, renumbered Article 29 (a) of the Telegraphers' Agreement, was mutually revised to provide that at one shift offices meal period shall be regularly assigned and shall not be less than thirty minutes nor more than one hour and shall be between the third and sixth hours after starting work.

When the above mentioned Article 29 (a) became effective, and since, the assigned starting time of 5:50 A.M. continued and, as well, the meal period time remained the same (10:30 A.M. to 11:30 A.M.), it is clear that such meal period allowance did not conform with the revised rule.

Carrier's Assignment Bulletin No. 11, effective 2:01 A.M., April 27, 1947, shows the assigned hours at Elmora Avenue 4:50 A.M. to 10:00 A.M. and 11:00 A.M. to 1:50 P.M. daily except closed on Sundays. This assignment also called for two hours overtime the last weekday of each month, 4:00 P.M. to 6:00 P.M.

With Assignment Bulletin No. 12, effective 12:01 A.M. August 1, 1947, the assigned hours were set at 4:50 A.M. to 9:30 A.M. and 10:30 A.M. to 1:50 P.M. daily except closed Sundays and the seven specified holidays.

If this Board rejects the Carrier's arguments on the merits and rejects the previous decisions of the Board as set out above, claimant is still faced with Rule 36(a) which reads as follows:

"Claims for compensation alleged to be due must be presented in writing by an Employee or his Representative to his Supervising Official within one hundred days from the date covered by the claim."

which would prohibit any retroactive effect of such a claim as this beyond 100 days prior to claim.

(Exhibits not reproduced).

OPINION OF BOARD: Effective June 15, 1944 the parties negotiated a new "Meal Period" rule, which provided at one shift offices, the assigned meal period shall be between the third and sixth hours after starting work.

At Elmora Avenue, Elizabeth, New Jersey, the force consisted of one position titled ticket agent. On account of train service the agent's meal period could not be assigned in accord with Article 29, which became effective June 15, 1944.

The meal period assignment continued without protest for three years, or until July 11, 1947, when the Organization asked that correction in the assignment be made and pending such correction made claim for pay under Article 29 (c).

While the meal period was not assigned within the prescribed period, in view of delay in filing claim, retroactive pay should be allowed only from the date claim was presented, July 11, 1947.

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 claim shall be sustained subsequent to July 11, 1947 in accordance with the Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

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