

Award No. 5636

Docket No. MW-5624

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

(Texas and New Orleans Railroad Company)

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

(1) The Carrier violated the effective agreement when they required Section Foreman L. F. Trauth, Welder E. J. Legendre, Welder Helper E. J. Champagne, and Section Laborers Fred Carmouche, Philip Baxter, C. Harvey, Garfield White, P. J. Francisco, to work a ten (10) hour day on October 9, 1950, and refused to compensate them at their respective time and one-half rate of pay for services rendered during one hour (1) of the two (2) overtime hours worked;

(2) The above listed employes be paid the difference between the amount received at the straight time rate of pay and the amount they should have received at the time and one-half rate of pay for this (1) hour service on October 9, 1950.

JOINT STATEMENT OF FACTS: On October 9, 1950, Welder E. J. Legendry, Welder Helper, E. J. Champagne, Section Foreman L. F. Trauth, Section Laborers Fred Carmouche, Philip Baxter, C. Harvey, Garfield White and P. J. Francisco were regularly assigned to work from 7:30 A. M. to 4:30 P. M., with a lunch period from 12 noon to 1:00 P. M. On October 9, 1950, they were working on the passenger main track at Avondale. At 12 noon the track was not safe for trains to pass and these men were required to work until 2:00 P. M. without their lunch period. They were allowed twenty minutes to eat from 2:00 to 2:20 P. M., with pay. They then continued working until 5:30 P. M.

These men were paid pro rata from 7:30 A. M. to 4:30 P. M., a total of 9 hours, including one hour regular meal period. They were paid one hour at the rate of time and one-half from 4:30 P. M. to 5:30 P. M.

T. C. Montgomery,
Manager of Personnel

H. H. Reddick,
General Chairman, BofMofWE

or attempt to answer them at this time. Every effort has been exerted to set forth all relevant argumentative facts, including documentary evidence in exhibit form, but as it is not known what the Organization will present, the Carrier desires an opportunity to make such additional answer thereto as may be deemed appropriate.

The facts are so clear that the Carrier does not desire oral hearing unless the Organization requests oral hearing, in which event the Carrier also desires the same opportunity to be heard and, thereafter, an opportunity to file such written answer to oral argument as may be made by representatives of the Organization at the hearing as may be deemed necessary and proper.

Wherefore, premises considered, the Carrier respectfully requests that the claim in all things be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This case presents the question whether a meal period, not afforded within the allowed or agreed time limit and worked, should be paid for at pro rata or at time and one-half.

Article IX Rule 1 establishes 8 consecutive hours, exclusive of the meal period, as a day's work, "except as otherwise provided in these rules".

Article IX Rule 3 (and Award 4944) require pay at time and one-half for hours worked in excess of 8, "except as otherwise provided in these rules".

Article XI Rule 1 establishes a work week of 40 hours consisting of 5 days of 8 hours each, "except as otherwise provided herein", and requires payment at time and one-half for work in excess of 40 straight time hours in any work week.

Article XV Rule 6 provides:

"If the meal period is not afforded within the allowed or agreed time limit and is worked, the meal period shall be paid for at pro rata rate. . . ."

FIRST. There is no real contradiction in these Rules. A familiar guide to the construction of agreements gives a special rule controlling effect over a general rule. The general provision for an 8 hour day, time and one-half after 8 hours and a 40 hour week must, therefore, bow to the special specific treatment of meal periods worked.

Moreover, none of these general rules is absolute or unqualified. Each contains an excepting clause—"except as otherwise provided"—which expressly indicates that deviations from the general rules were contemplated. To assert a contradiction is to disregard these excepting clauses.

SECOND. We entertain no doubt that "pro rata" as used in Article XV Rule 6 means "straight time." Such is its ordinary reasonable meaning. If there is any doubt about this, the doubt is laid at rest by consultation of Article V Rule 5 in the 1937 Agreement which paid for the ninth and tenth hours at "pro rata hourly rate" and beyond the tenth hour at time and one-half. It may be that, when the overtime rule was amended, failure to amend the meal period rule was an oversight; but if it was, we are powerless to correct it.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 1st day of February, 1952.