

Award No. 5800

Docket No. MW-5519

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BOSTON AND MAINE RAILROAD

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: Claim of the Boston and Maine Railroad that the unsettled claim, herein set forth, which has been declined by the highest officer of the Carrier designated to handle such matters, is without merit and should be denied. The claim reads:

That work equipment operators A. A. Purdy, G. C. Height, A. Bourgault and other work equipment operators who might be similarly affected, be reimbursed at overtime rates of pay for the difference between their established meal period of thirty minutes (12:00 Noon to 12:30 P. M.) and any meal period in excess of thirty minutes which they are ordered to take under the terms of Mr. Healey's directives of February 27, 1950 and March 16, 1950 for each day such a situation exists, or has existed, commencing with March 14, 1950 and continuing for such period as the directives are in effect or a settlement is made in the matter which is satisfactory to all concerned.

CARRIER'S STATEMENT OF FACTS: The controlling agreement between the parties to this docket became effective May 15, 1942. On May 22, 1942 Bridge and Building Supervisor F. R. Spofford caused the following notice to be issued:

"CRANE ENGINEERS: When on gasoline cranes the starting time for these men will be thirty minutes in advance of the starting time of the crew with which they are working unless other arrangements are made. They will be allowed thirty minutes to put crane up for the night, make secure, etc., after crane reaches point where it is to put up. When on steam cranes, the starting time for these men will be one hour in advance of the starting time of the crew with which they are working, unless other arrangements are made. They will be allowed thirty minutes to put crane up for the night, make secure, etc., after crane reaches point at which it is put up. All crane engineers will take a noon period to correspond with the crew with which they are working unless other arrangements are made."

The practice outlined in notice above was in effect on all cranes until September 8, 1949, when it was found expedient to establish a new headquarters and working hours for cranes and other equipment at Salem, Mass., as a result of which a few bulletin notices were posted containing specific hours of service.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and are hereby made a part of the question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The effective Agreement between the parties to this dispute was entered into on May 15, 1942. On May 22, immediately following, Carrier issued an instruction notice to crane engineers which in substance provided that operators of gasoline cranes would commence work 30 minutes in advance of starting time of the crew with which they were working and that they would be allowed 30 minutes to put up the crane after reaching the point where it was to be put up. On steam cranes the rule was the same except that the starting time was to be one hour in advance of the starting time of the crew with which they were working. The notice also provided that crane engineers were to take a noon period to correspond with the crew with which they were working unless other arrangements were made. On March 16, 1950, a bulletin was issued, the pertinent parts of which provided:

"Commencing on the above date, the working day of operators will consist of eight (8) hours per day to conform with hours of crew with which crane is working.

"When not working with crew hours will be 8:00 A. M. to 4:30 P. M., one-half hour meal period."

The Organization contends that the bulletin of March 16, 1950, is in violation of the Agreement. Claims were filed by the crane operators named in the instant dispute. Carrier contends that the Organization neglected or refused to progress the claims to this Board and, because of the continuing nature of the alleged violation, the Carrier brought the matter to this Board for final decision.

The basis of the claim is that meal periods for this class of employees had been fixed for many years at 30 minutes, 12 noon to 12:30 P. M., and that the bulletin of March 16, 1950, in conforming the assigned hours of this class of employees to the hours of the crew with which they are working, has the effect of extending the meal period in many cases. The claim is that claimants be paid at the overtime rate for any time used as a meal period in excess of 30 minutes.

The dispute appears to have grown out of a situation where crane operators were working in conjunction with track department crews having an established meal period of one hour. The argument is advanced that crane operators used the second 30 minutes of the meal period in performing preventive maintenance on his crane. It is asserted that bulletin of March 16, 1950, deprives these employees of 30 minutes overtime work to which they were entitled. This portion of the argument is not sound as it is clearly the prerogative of Management to determine the amount of maintenance work to be done on an overtime basis or otherwise. The sole question is whether the requirement that meal periods of crane operators be conformed to those with crews with which the crane is working is violative of the Agreement when they are required to take a meal period in excess of 30 minutes.

Controlling rules of the Agreement are as follows:

"When a meal period is allowed, it will be between the beginning of the fifth hour and the ending of the sixth hour after starting work. When meal periods are established, they shall not be changed within this two hour period except by agreement between the employees and the employer." Rule 36, Agreement effective May 15, 1942.

"The established meal period shall not be less than thirty (30) minutes nor more than one (1) hour unless otherwise mutually agreed to." Rule 38, Agreement effective May 15, 1942.

Rule 38 clearly permits the Carrier to fix the meal period at not less than 30 minutes nor more than one hour. Consequently, in bulletining a position, it may properly fix the meal period at any length of time from 30 minutes to one hour. Rule 36 imposes a further limitation upon the fixing of meal periods by requiring that they be fixed between the beginning of the fifth hour and the ending of the sixth hour after starting work, and that when fixed within the period they shall not be changed except by agreement. But this does not mean that if the work assignment is changed, the meal period also may not be changed within the limitations of the cited rules. Where a Carrier changes the work assignment of an employee by notice as it did here, it clearly has the right to change the meal period within the limits prescribed by Agreement rules. It is true that a Carrier may not capriciously juggle meal periods around within the two-hour limit after they have once been fixed by bulletin. But when the hours of work of the assignment are changed by bulletin, the meal period can also be changed within the rules governing meal periods. We think this dispute is largely controlled by the reasoning contained in Award 4851. No question of the correctness of the working hour assignment or the starting time fixed is here involved. There is no basis for an affirmative award.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute 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 per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 26th day of May, 1952.