Award No. 6365
Docket No. TE-6399

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad that:

(a) J. J. McGraw, Tower Director, shall be paid 20 minutes at time and one-half rate for meal periods not afforded on April 15, 22, 29, May 6, 13, 20, 27, June 3, 10, 24, July 1, 8, 15, September 2 and October 7, 1951;

(b) G. G. Sinclair, Leverman, shall be paid 20 minutes at time and one-half rate for meal periods not afforded on April 15, 22, 29, May 6, 13, 20, 27, June 3, 10, 24, July 15, September 2, and October 7, 1951; and

(c) W. L. Close, Leverman, shall be paid 20 minutes at time and one-half rate for meal periods not afforded on July 1 and 8, 1951.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of August 1, 1950, by and between the parties and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

On the dates involved J. J. McGraw occupied the first trick tower director position at Tower "C"; on all of these dates G. G. Sinclair was his leverman, except on July 1 and 8 W. L. Close occupied the leverman position. Neither McGraw, Sinclair nor Cloce on the named dates could find time, nor were they told when, to take their meal periods in accordance with the provisions of Article 8(b), of the Telegraphers' Agreement. Claims were accordingly filed and denied.

POSITION OF EMPLOYES: As briefly indicated in the Organization's Statement of Facts, on the dates involved in this proceeding J. J. McGraw occupied the first trick tower director position in Tower "C," Boston. On these dates either G. G. Sinclair or W. L. Close was his leverman. Neither McGraw, Sinclair nor Close were afforded meal periods in accordance with Article 8(b), of the Telegraphers' Agreement.

As a result of further negotiation, a Memorandum of Agreement, known locally as Decision TE14, became effective January 11, 1951. This Memorandum of Agreement reads as follows:

> "The following is the agreed interpretation of Paragraph (b), Article 8—Meal Period—of Agreement between the Parties, effective August 1, 1950:
>
> 1. The Railroad will notify all eight (8) consecutive hour assignments that under Article 8 (b) all incumbents of such positions will be allowed twenty (20) consecutive minutes for meal without loss of pay, some time between the ending of the third and beginning of the sixth hour of the tour of duty.
>
> 2. These lunch periods need not be the same time each day.
>
> 3. The employe will find his own meal period within the prescribed time limit by consulting with the Train Dispatcher, or any other Officer the Railroad may designate, but if said meal period cannot be arranged, twenty (20) additional minutes at time and one-half will be allowed".

The Claimants in this case did not at any time make any attempt to "consult with the Train Dispatcher, or any other officer" designated by the Railroad. Mr. McGraw merely claimed time, stating that he could not find a meal period and listing the work he did.

All Claimants worked at Tower "C".

Attached hereto as Carrier's Exhibit "A" is a copy of a notice sent to all Towermen in Tower "C" by the then General Chairman, C. S. Hill.

POSITION OF CARRIER: It is clear from the rules quoted above that these Towermen were to find their own meal period by consulting with the Train Dispatcher, or other designated officer. Instead of doing this, these Claimants insisted that the Carrier must designate the meal periods. Therefore, they made no attempt to notify anybody but arbitrarily continued to claim time to which they were not entitled. The rules and the attitude of these Claimants make an affirmative award impossible.

All data and arguments contained herein have been presented to the Employes in conference and/or by correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: Claims are filed on behalf of three employes, for 20 minutes time for meal period, at the time and one-half rate, not afforded the employes on dates as specified in Claims (a)—(b)—(c). Claim is made under provision of Article 8 (b) of the current Agreement.

Carrier contends that as a result of negotiations between the parties, on January 11, 1951, an Interpretation of Article 8 (b) of the Agreement was agreed upon, and applying to Tower "C", the location of the present claims. In the Interpretation the parties agreed, in substance,

> 1. That all incumbents would be allowed 20 minutes for meal time, between the ending of the third hour and beginning of the sixth hour of the tour of duty.
>
> 2. That lunch periods need not be the same on each day.
>
> 3. That the employe will find his own meal period within the time prescribed by consulting with the Train Dispatcher or other

designated by Carrier, but if the meal period could not be arranged, (20) minutes at time and one-half to be allowed.

Such Interpretation was agreed upon by the then General Chairman and became effective January 11, 1951 and is identified as Decision TE-4 in the record.

It is obvious that under the Interpretation of Article 8 (b) the burden is on the employes to determine the time they are entitled to a meal period, between certain hours, as provided in Section (1) of the Interpretation. Section (3) of the Interpretation provides the employe consult with the Train Dispatcher or other Officer designated by Carrier, and if the meal period cannot be arranged, then the employe would be allowed the twenty (20) minutes at the one and one-half rate. It seems to us that by reference to the Interpretation, it means the employe will find time for his meal period, and that he will consult with the Train Dispatcher or other designated Officer. We are unable to find in the record that Mr. McGraw or the other employes made any effort to consult with the Train Dispatcher or other officer as so provided, but take the position that Carrier has failed to designate such Officer, the employes sat idly by and continued to file time slips for the extra money. It is the opinion of the Board, the employes have failed to establish a claim as alleged, and have wholly failed to consult with the Train Dispatcher or other designated Officer to arrange their meal period, nor have they shown any reasonable spirit of cooperation with Carrier to arrive at a satisfactory conclusion of their apparent misunderstanding of the effect of the Interpretation of the Agreement, made at the time, in good faith by the then General Chairman.

It is the duty of this Board to interpret the rules of the Agreements as they are made. We are not authorized to read into a rule, that which is not contained, or by an award add or detract a meaning to the Agreement which was clearly not the intention of the parties. Many awards have been made by this Board, on this subject, and we refer to only a few as affirming our position. See Awards 4439, 5864, 5971, 5977.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing theron;

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 the claims are without merit and should be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 6th day of October, 1953.