Award No. 8194
Docket No. CL-7540

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney A. Wolff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, as amended, particularly Rule 4-B-1, when it failed to provide meal periods for Baggage Checkmen, Pennsylvania Station, Baltimore, Md., Maryland Division.

(b) D. M. Abbott, C. P. Gorsuch, R. F. Ritter, Albert Patterson, and J. M. Keefe, Baggage Checkmen, be paid 20 minutes each day worked from May 27, to August 27, 1952, inclusive. (Docket E-835.)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants in this case hold positions and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Carrier maintains at Pennsylvania Station, Baltimore, Maryland, positions of Baggage Checkmen held by the claimants in this case. These positions have a tour of duty of eight consecutive hours on duty without assigned meal period. During the period covered by this claim the incumbents of these positions were not provided relief during their meal period and consequently did not receive twenty continuous minutes within which to eat.

Claim was presented in the usual and agreed-upon way that the Rules Agreement was violated and the claimants should be compensated for the

in excess of eight hours in any twenty-four hour period will be considered as overtime.

However, as set forth hereinbefore the Claimants were not on duty more than eight hours on any of the days in question. Since, admittedly, the Claimants were not on duty more than eight hours on any of the days in question, they have been properly compensated under the provisions of the applicable Agreement and are not entitled to the additional compensation which they are seeking.

Without waiving its position in this case as set forth above, the Carrier desires to repeat here that if the Board should find that the applicable Agreement has been violated, which the Carrier emphatically and vigorously denies, those Claimants assigned to the third tour would not be entitled to any adjustment. In support of this contention the Carrier desires to point out that the Employes in their handling of the claim on this property, have agreed that no violation exists on the third tour. This is stated in the last paragraph of the General Chairman's letter of October 15, 1953, attached as Exhibit "E", quoted below:

> "It is our opinion that the joint report definitely establishes that the claims in this case, **with the exception of the third trick,** are payable." (Emphasis added.)

III. Under The Railway Labor Act The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, Subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that under the provisions of the applicable Agreement the Claimants were properly allowed twenty minutes within which to eat without deduction in pay between four and one-half and six hours after their starting time as provided in paragraph (c) of Rule 4-B-1, and no provision of the applicable Agreement supports the claim for compensation now being sought.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

All data contained herein have been presented to the employes involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This case presents the question whether the claimants who are employed as Baggage Checkmen at the Baltimore, Mary-

land station, on the first, second and third tricks are entitled to a consecutive period of time, not to exceed 20 minutes, for eating, between 4½ hours and 6 hours after their starting time.

The Carrier asserts that the men during the periods involved were not actively engaged in serving its patrons, and thus were free to eat. However, the Committee, comprised of a representative of each party, and selected to investigate and report the facts, found "that on the first and second trick operations, the 20 minute lunch period could not be taken without interruptions, in the answering of telephones and the accepting of and handling of baggage," but that on the third, midnight, trick "there was ample time for the 20-minute lunch period without any particular interruptions."

Following this report, the Brotherhood, while conceding that the claims asserted with regard to the third trick are not payable, yet contended that the claims are payable with regard to the first and second trick.

Rule 4-B-1 which is here involved is entitled "Meal Period" and provides:

> "(a) A meal period, which shall be continuous, will be established for each position between four and one-half and six hours after starting time, with full release from duty during such meal period.
>
> Except as provided in paragraph (c) of this rule (4-B-1), such meal period will not be less than thirty minutes nor more than one hour, unless the Management and the Division Chairman agree to extend the meal period, but in no event shall it exceed one hour and thirty minutes.
>
> (b) When an employe is required to work overtime after completion of his regular tour of duty, he may be allowed time within which to eat and be paid as if on continuous duty.
>
> (c) For regular operations requiring continuous hours, eight consecutive hours without meal period may be assigned as constituting a day's work, in which case not to exceed twenty minutes shall be allowed for eating without deduction in pay between four and one-half and six hours after starting time.
>
> * * *
>
> (d) * * *"

In reaching our conclusion, we may not restrict ourselves to paragraph (c) of the Rules as argued by the Carrier; rather we must consider all of its applicable parts and construe paragraph (c) against the backdrop of the entire Rule 4-B-1 of which (c) is only a subdivision.

It will be noted that under (a) an employe is to receive a definite specified fixed meal period, whereas under (c) because of the demands of the job, no definite specified fixed time is assigned for the meal period which, depending upon the requirements of the job, may be varied from time to time.

To sustain the Carrier's position, would require this Board to construe Rule 4-B-1 as permitting the employes to do their eating on a "bite as bite can" basis. With the time allowed for eating spread over a 1½ hour period, under such a construction, we can visualize an employe holding a sandwich in one hand while with the other handling a patron's bag and possibly chewing his last bite at the same time!

We cannot adopt such a construction of the Rule providing that a meal period "not to exceed 20 minutes shall be allowed for eating" (c). Such time allowed for eating the one meal involved can only contemplate one period of time, and not the sum total of what might well be insignificant time periods.

Yet the time allowed is not necessarily to be a flat 20 minutes. For us so to rule would be contrary to the Rule which fixes 20 minutes as a maximum. We agree with the Brotherhood "that such employes may take such time as necessary up to 20 minutes and that such time is consecutive." Thus, if it is reasonably possible for the employes to eat in a shorter period of time, the time allowed need not be of 20 minutes duration.

It appearing therefore that the claimants on the first and second tricks, not having been allowed their meal periods as herein construed, their claims are allowed. The claims advanced by the claimants on the third trick are denied since they had sufficient time for their meal periods without any particular interruptions as found by the joint committee.

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 the Carrier violated the Agreement as stated in the Opinion.

AWARD

That the claims of the employes on the first and second tricks are payable.

The claims of the employes on the third trick are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January, 1958.