

Award No. 10850

Docket No. CL-10562

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO AND ILLINOIS MIDLAND RAILWAY COMPANY**

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

1. The Carrier violated and continues to violate the current Clerks' Agreement effective February 1, 1938, revised and reprinted April 1, 1953 when it changed assigned meal period of J. W. Benson and C. E. Knaus effective December 10, 1957.

2. The Carrier shall now be required to compensate Claimants J. W. Benson and C. E. Knaus, and their successor or successors, if any, for all time worked during their proper meal period, 12 Noon to 1:00 P. M., beginning December 10, 1957, and all subsequent dates so used, at punitive rate at the rates of their positions, \$22.88 per day and \$22.02 per day, respectively, plus subsequent increases.

NOTE: Reparation due employees to be determined by joint check of Carrier's payrolls and such other records that may be deemed necessary.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 10, 1957, Clerks Benson and Knaus were regularly assigned to positions of Chief I.B.M. Bureau and Assistant Chief I.B.M. Bureau, respectively, with assigned hours 8:00 A. M. to 12 Noon and 1:00 P. M. to 5:00 P. M., meal period 12 Noon to 1:00 P. M.

Effective December 10, 1957 the meal period assignments were changed to 11:30 A. M. to 12:30 P. M. for Clerk Benson and 12:30 P. M. to 1:30 P. M. for Clerk Knaus with authority to exchange the new meal periods or revert to the old meal period when in their opinion the work permitted. Starting time remained 8:00 A. M.

Clam was filed and handled in the usual manner by correspondence and in conference up to and including the highest officer designated by the Carrier for that purpose without settlement being made.

OPINION OF BOARD: Rule 41 of the Agreement between the parties effective February 1, 1938 provided as follows:

"RULE 41. MEAL PERIOD. When a meal period is allowed, it will be between the ending of the fourth hour and beginning of the sixth hour after starting work, unless otherwise agreed upon by the employees and the employer."

Prior to December 10, 1957 Claimants Benson and Knaus were regularly assigned as Chief and Assistant Chief, respectively, of the IBM Bureau, with assigned hours 8:00 A. M. to 12 Noon and 1:00 P. M. to 5:00 P. M., and with assigned meal period 12 Noon to 1:00 P. M. In order to utilize the IBM machines more efficiently during the noon hour on certain days during the month, Carrier's department head requested Claimants, and Claimants agreed, to stagger their lunch periods so that one would be on duty, with one having his meal period 11:30 A. M. to 12:30 P. M. and the other 12:30 P. M. to 1:30 P. M. Under this arrangement Claimants had authority to exchange new meal periods or revert to their old meal period when in their opinion the work permitted.

Carrier maintained that under the language of Rule 41 Claimants individually had authority to agree upon the change in the time when they would take their respective meal periods. Employees maintained that Rule 41 did not permit Claimants individually to barter away the requirement that the meal period be taken between the hours specified; that this meal time was obtained by collective bargaining and could be changed only in the same manner.

The use of the singular term "employee", or such a term as "particular employee" or "employees affected", in Rule 41 would have obviated this dispute. However, the plural term "employees" is susceptible of two meanings. It suggests on the one hand agreement for change by collective action only, and on the other hand agreement by the individual employees in question.

The Board believes that Carrier's position should be sustained. If the parties had intended that agreement for change of the meal period for individual employees must be negotiated with the General Chairman or other representative of the employees, apt language was readily available, and this was used in other rules to designate a representative. Thus, by contrast Rule 39 provided that the meal period should not be less than 30 minutes nor more than one hour unless agreed to by the General Chairman — assurance that the individual employee himself could not give up his right to a minimum of 30 minutes for meal period at least in a case not covered by Rule 40 (Continuous Work Without Meal Period) or Rule 42 (Work During Meal Period). See also Rules 1½(e), 1½(f), 6, 9, and 23.

In view of the interpretation made of Rule 41 above, Claimants did not, without sanction, bargain away a right obtained for their benefit through collective bargaining; the rule itself granted them the right to agree to changed meal periods. Furthermore, the arrangement here did not result in either Claimant's working in excess of eight hours per day or during the meal period taken by him, nor in his being deprived of a full hour meal period.

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

That the parties waived oral hearing;

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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1962.