Award No. 13310
Docket No. CL-13020

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5070) that:

(a) Carrier violated the Clerks' Agreement when it failed and refused to allow twenty (20) minutes in which to eat to first and second trick Telephone Operators at Boston, Massachusetts on Sundays beginning on or about Feb. 19, 1960.

(b) Carrier violated the Clerks' Agreement when it failed and refused to allow twenty (20) minutes in which to eat to third trick Telephone Operator at Boston, Massachusetts, daily beginning on or about February 19, 1960.

(c) Helen Flood and her Relief, and their successors, on the first trick on Sundays; Marian Westcott and her Relief, or their successors, on the second trick on Sundays; and A. Schofield and her Relief, or their successors, on the third trick daily, shall be allowed not to exceed twenty (20) minutes in which to eat.

(d) Claimants as enumerated in (c), shall be allowed twenty (20) minutes pay at punitive rate for each day they are not allowed twenty (20) minutes in which to eat, beginning April 11, 1960 and continuing until the matter is adjusted.

(e) All other employes who are assigned to Telephone Operator positions required to work continuously without meal periods shall be allowed, not to exceed twenty (20) minutes, in which to eat, and if not so allowed, they shall be paid twenty (20) minutes pay at punitive rate for each day the violation continues until adjusted.

NOTE: Reparation due employes to be determined by joint check of Carrier's payroll and other records.

EMPLOYES' STATEMENT OF FACTS: This dispute arises from Car-

A sustaining award by your Honorable Board would render the provisions of paragraph (d), Rule 50 nugatory and would give rise to a host of complex problems.

Carrier respectfully submits:

(a) No evidence has been produced that claimants were not allowed up to twenty minutes in which to eat or prohibited from eating by service requirements.

(b) The Brotherhood has acquiesced, over a period of many years, in Carrier's interpretation of the agreement provision controlling in this dispute.

(c) Your Honorable Board may not properly revise or rewrite the controlling Agreement between the parties.

The claim is without merit and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The material facts are not in dispute. Claimants were assigned as Telephone Operators at Boston, Massachusetts, on a continuous time basis under paragraph (d) of Rule 50, which reads:

"(d) Continuous Work without Meal Period—For regular operations requiring continuous hours, eight (8) consecutive hours without meal period may be assigned as constituting a day's work in which case not to exceed twenty (20) minutes shall be allowed in which to eat, without deduction in pay."

The sole issue before the Board is whether under Rule 50(d) (supra), the Carrier was required to grant Claimants and others similarly situated a meal period of not to exceed twenty consecutive minutes.

There should be no doubt of the plain meaning of the controlling rule language. It is designed to apply solely to those employes assigned to continuous work of eight consecutive hours without a meal period, and, as a consideration therefor, the rule provides that there will be no deduction in the pay of those employes for consuming not to exceed the specified time of twenty minutes within which to eat their meals. Nothing is said about how this twenty-minute period is to be assigned or taken. Had the parties intended to specify twenty "consecutive" minutes, they could easily have done so. Certainly the Board may not, by interpretation, add such language to the rule as negotiated and consummated by the parties. Award 2622.

The Awards cited and relied on by the Employes are not in point here. Awards 2855, 2856, 3943 and 6814 are distinguishable because there the Claimants were not given any time within which to eat. Awards 3001 and 4054 involved second meal periods during overtime hours. Award 8194 took into consideration a rule specifying, among other things, a full release from duty during meal periods. That type of rule is not present here.

It is not disputed that Claimants were permitted time, but not a consecutive period of time, within which to eat. The rule requires no more.

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of February 1965.

LABOR MEMBER'S DISSENT TO AWARD 13310 (DOCKET CL-13020)

We believe the Referee erred in his Opinion, Findings and Award.

The Opinion reads in part as follows:

"The sole issue before the Board is whether under Rule 50(d) (supra), the Carrier was required to grant Claimants and others similarly situated a meal **period** of not to exceed twenty **consecutive** minutes.

* * *

* * * Nothing is said about how this twenty-minute period is to be assigned or taken. Had the parties intended to specify twenty 'consecutive' minutes, they could easily have done so. Certainly the Board may not, by interpretation, add such language to the rule as negotiated and consummated by the parties. * * * "

This Division has ruled otherwise.

In sustained Award 6814, involving a similar dispute, Referee Francis J. Robertson held as follows:

"The Carrier's contention with respect to the failure of the Employes to sustain the burden of proof seems to be based upon its concept of the rule which is apparently that so long as twenty minutes in the aggregate spread over the eight hour shift is allowed to the employe in which to eat there is compliance with the rule. From the Carrier's submission in this dispute it is clear that the requirements of the service at Redondo are such that the greatest period of uninterrupted time a towerman would have during a shift would be about 5 minutes (the length of time it takes for a train or a cut of cars to move through the plant). This is a clear admission that the employes involved were not free to eat for a period of twenty minutes. Inasmuch as the caption of the rule refers to a 'Meal Period' the con-

clusion is inescapable that the twenty minutes refers to a period of time in which to eat and set aside for that purpose. **If it were intended that meals were to be taken on the fly, so to speak, five minutes or less at a time, it is reasonable to expect that the rule would merely have provided that employes would be permitted to eat while on duty without any provision for a specific number of minutes for the purpose. We conclude, therefore that the Claimant employes were not allowed twenty minutes in which to eat within the meaning of the rule." (Emphasis ours.)**

Particular attention is directed to the underscored portion of Referee Robertson's award. Up to this time, this Division has not acted contrary to the belief outlined by Referee Robertson.

Under the Referee's decision in this award, if an Employe with hours of service 8:00 A. M. to 4:00 P. M. could perform his duties with one hand, he could likewise, while on duty, eat with the other hand from 8:00 A. M. to 4:00 P. M., which we know was not contemplated by this rule. Hence, it is quite obvious that the inclusion in the rule of twenty (20) minutes in which to eat implies that it be consecutive, not piecemeal. If no specific period for lunch was contemplated by the parties, the twenty (20) minutes need not be mentioned.

For the above reasons, we dissent.

C. E. Kief,
Labor Member