

Award No. 13457

Docket No. MW-13108

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE COLORADO AND SOUTHERN RAILWAY COMPANY**

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

(1) The Carrier violated the agreement when, on November 15, 1960, it required section laborers Max D. Torres, Sam Maldonado, Martin Riagosa, Jimmie Cruz, Daniel Riagosa, Baltasar G. Lopez to work during their assigned meal period and failed to compensate them therefor in conformance with agreement rules.

(2) Section Laborers Max D. Torres, Sam Maldonado and Martin Riagosa be allowed 30 minutes' pay at straight time rates and Section Laborers Jimmie Cruz, Daniel Riagosa, Baltazar G. Lopez and A. R. Holquin be allowed 20 minutes' pay at straight time rates account of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant employees are regularly assigned to positions of section laborer on Section No. 40 and are assigned to work on Mondays through Fridays from 7:30 A.M. to 12:00 Noon and from 12:30 P.M. to 4:00 P.M. Their assigned meal period was from 12:00 Noon to 12:30 P.M. All section crews on this property have traditionally been assigned a meal period from 12:00 Noon to 12:30 P.M. As evidence of the fact that Section 40 and other section crews have assigned meal periods from 12:00 Noon to 12:30 P.M., we are reproducing, by the photocopy process, statements to that effect by the claimants' foreman on Section 40 and from the section foremen on Sections 19 and 21. These statements are reproduced as the next page of this submission.

"The assigned lunch period for section number 40 is from 12 Noon to 12:30 P.M.

**W. L. Ley, Foreman
Section number 40"**

This is the gang where the violation occurred.

The Carrier respectfully submits that in view of the evidence herein submitted the instant claim is not in the least supported by schedule rules or agreements, and is manifestly defeated by recognized past practice and established precedent on the property; therefore, cannot be sustained.

It is quite obvious, the Carrier with reference further submits, that the submission of the instant dispute to your Division is an attempt on the part of the petitioning Organization, in a manner unmistakably contrary to provisions of the Railway Labor Act, to obtain by interpretation a new rule oppressive to the Carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: This case turns on whether the Claimants in fact had a specific thirty minutes of the day assigned to them as their meal period, as claimed by the Brotherhood. Brotherhood introduces statements in its Submission purporting to be signed by the Claimants and two other section foremen, attesting that the assigned meal period was from 12:00 Noon to 12:30 P. M. Carrier claims, among other things, that these were not presented on the property. The statements in question are undated, and there is no convincing evidence that they were introduced on the property. They will, therefore, be given no weight by us.

It is conceded by the Carrier that the employes generally, but not always, took their lunch period between 12:00 Noon and 12:30 P. M., as claimed by the Brotherhood, but Carrier denied that this time is the assigned time. Brotherhood argues that since this is the time traditionally taken for the lunch period, it is the time intended by the words in Rule 32 (b): "... within the allowed or agreed time limit. . . ."; that the use of the words "time assigned for meal periods" in Rule 24 (b) proves that the Agreement intends that specific meal periods be assigned to employes. None of these arguments constitutes sufficient evidence to prove that the Claimants were in fact assigned the time between 12:00 Noon and 12:30 P. M. as their fixed lunch time to narrow the apparent wider meaning of the quoted words of Rule 32 (b).

Brotherhood also argues that an interpretation of Rule 32 (b) that the quoted words refer to any thirty minutes to one hour between the starting and ending time set forth in Paragraph (a) of Rule 32, would be absurd and ridiculous, whereas Brotherhood's interpretation is reasonable and fair; that in such a choice the absurd and ridiculous interpretation must be rejected in favor of the reasonable one. While we do not disagree with the choice to be made in such a hypothetical case, that is not the state of affairs in the instant case. The record shows that the shift from the customary meal-time break in this case was not made capriciously as would be condemned by the dicta quoted by the Brotherhood from our Award 5800; we need not assume that the flexibility given the Carrier in our reading of Rule 32 will be used capriciously (the record supports quite the contrary conclusion), nor with absurd or ridiculous results. We cannot find on the evidence in this record that Claimants had a fixed assigned lunch period. Therefore, we will deny the claim.

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 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 8th day of April 1965.