Award No. 15794
Docket No. MW-16262

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The Carrier violated the effective agreement when, on May 5, 6, 7, 11, 12 and 13, 1964, it instructed and/or permitted the employes designated in Part 2 hereof to work during the lunch period without compensating them for same in accordance with the agreement, and as a result thereof:

[Carrier's file MW-3132]

(2) Machine Operators J. A. Greene, E. L. Smith, J. E. King, W. P. Calloway, C. W. Sanders, H. C. Trice, B. N. Callahan, J. B. Dozier, H. O. Albritton, R. E. Kearbey, P. Mills, and the other maintenance of way forces assigned to T & S Gang No. 2 each be paid at his respective time and one-half rate of pay for his half-hour lunch period on the above designated dates.

EMPLOYES' STATEMENT OF FACTS: Each Claimant has established and holds seniority in his respective class and craft in accordance with the effective agreement and was assigned to T & S Gang No. 2 during the first payroll period of May 1964.

Under the make up time provisions of the agreement, the forces assigned to T&S Gang No. 2 were working 9 hours a day Monday through Thursday and 4 hours on Friday with starting time being 6:00 A. M. Central Standard Time.

At 11:00 A. M. on May 5, 1964 the Claimants were afforded an opportunity to eat.

At 11:30 A. M. on May 6, 1964 the Claimants were afforded an opportunity to eat.

At 11:15 A. M. on May 7, 11 and 12, 1964 the Claimants were afforded an opportunity to eat.

At 12:00 A. M. on May 13, 1964 the Claimants were afforded an opportunity to eat.

Director of Personnel Tolleson wrote the General Chairman on November 10, 1965, granting an extension of time from 9 to 12 months so that a conference could be held in keeping with historical practice. Copy of Mr. Tolleson's letter is marked Carrier's Exhibit No. 10.

On December 2, 1965, the Director of Personnel confirmed the conference of November 26, 1965, to General Chairman Padgett, and the pertinent part of Mr. Tolleson's letter reads as follows:

> "This will confirm conference held with you on November 26, 1965, by Mr. J. L. Ferrell, Assistant Director of Labor Relations, in which this matter was fully discussed. For all the reasons stated in conference, this will reaffirm my full and final decision of March 4, 1965."

General Chairman Padgett next wrote Director of Personnel Tolleson under date of December 17, 1965, the last paragraph of which reads as follows:

> "Mr. Ferrell had a letter from the supervisor in charge of the gang setting forth the time certain trains cleared the work location, however, this letter did not state emphatically that the employes had their lunch period contrary to the time specified in the claim. Therefore we cannot accept your decision as being in keeping with the effective agreement."

Mr. Padgett's entire letter of December 17, 1965, is attached hereto marked Carrier's Exhibit No. 11.

The last communication on the property was a letter written by the Director of Personnel on December 20, 1965, to the General Chairman, and photo copy of same is hereto attached marked Carrier's Exhibit No. 12. The General Chairman's self-serving baseless assertions were denied by the Director of Personnel, as that letter shows.

The foregoing is the principal correspondence concerning the claim, and as will be noted the Brotherhood has failed to produce any evidence whatever to support their claim. Carrier flatly denies the General Chairman's repeated self-serving assertions. It is a fact that neither the effective rules agreement interpretations nor historical practice support the claim. For that reason the claim was denied in its entirety by each and every officer of Carrier.

The effective Agreement between the employes represented by the Brotherhood, and this Carrier, is dated September 1, 1949, as amended, and is on file with your Board. The Agreement, by reference, is made part and parcel of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The governing rule herein is Rule 15(a) of the effective Agreement of the Parties which reads as follows:

> "Eight (8) consecutive hours, exclusive of meal period, shall constitute a day's work.
>
> The meal period shall be thirty (30) minutes. The meal period will be between the end of the fourth hour and the beginning of the sixth hour after starting work. If the meal period is not afforded

within the time limit and is worked the meal period shall be paid for at overtime rate and twenty minutes with pay in which to eat shall be afforded at the first opportunity."

The Organization contends this rule was violated by the Carrier, and the Claim is as above shown.

The Carrier primarily denied the Claim on two grounds: (1) that the reference to "the other maintenance of way forces assigned to T&S Gang No. 2 . . ." in the Claim was so vague and indefinite that this constituted a violation of Article V of the National Agreement of 1954, and (2) that, in any event, the Organization failed to present sufficient probative evidence to sustain the Claim.

Carrier's first contention, supra, may be dealt with briefly. Decision No. 4 of the National Disputes Committee has resolved this issue adversely to Carrier's argumentation herein and that decision is affirmed.

As to Carrier's second contention, we cannot agree that it is correct. The Record shows that in the early stages of handling this Claim on the property, the Organization stated in correspondence that it had possession of signed statements from the Claimants that their meal period was granted as set out in the initial claim letter; that these written statements showed that the meal period rule had been violated; and that a conference was requested. In further handling on the property, it appears that a conference was held on November 26, 1965. Subsequently on December 17, 1965, the General Chairman wrote the Director of Personnel, and in this letter he made the following statement:

> "Conference was held with your representative Mr. J. L. Ferrell, on November 26, 1965 at which time he advised that he would give this claim further consideration in view of the conflicting facts **as he was shown and acknowledged reading statements from the named Claimants as to the time they were allowed lunch on each of the dates designated in the claim, such time being the same as shown in the Statement of Facts in the initial claim letter.**" (Emphasis ours.)

The statement shown above was not denied by the Director of Personnel in his reply to said letter, which was dated December 20, 1965. Briefly, insofar as the Record shows, the factual allegations made in the December 17th letter were never denied by the Carrier on the property. A clerical mishap could have occurred, but we are not justified in speculating that this was what happened. Therefore, we conclude (without reflection on any person involved) that such signed statements did exist; that they were shown and presented to the Carrier on the property; that they substantiated the specific allegations the Claimants had made from the beginning of the Claim; and that they were not controverted. We further conclude from the foregoing circumstances that the Organization did present sufficient probative evidence to sustain the present Claim.

Consequently, the Claim should be allowed as presented.

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 violated by the Carrier.

AWARD

The Claim is allowed as presented.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1967.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.