# Award No. 17035

# Docket No. TE-15760

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**(Supplemental)**

Robert A. Franden, Referee

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## PARTIES TO DISPUTE:

## TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

## THE UNION TERMINAL COMPANY (DALLAS, TEXAS)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Union Terminal Company, Dallas, Texas, that:

1. Carrier violated Article VII (a) and (b) of the Telegraphers' Agreement when, beginning with September 9, 1964, and continuing daily thereafter, it declined to allow incumbents of towermen positions at North Tower and South Tower at Dallas, Texas, twenty minutes in which to eat during each shift of eight consecutive hours.

2. Carrier shall compensate each of the incumbents of the said positions the equivalent of twenty minutes at the overtime rate based on the rate of the position occupied for each day they have been denied twenty minutes in which to eat during their eight hour shift.

EMPLOYES' STATEMENT OF FACTS: Claimants herein are the incumbents of covered positions at Carrier's Towers at Dallas, Texas, in addition to extra employes who work the "tag end" day of each week at each Tower, and the successors of each regular, relief, and extra employe who works at said Towers. The regular assignees as of the claim date were listed at page 2 of the General Chairman's letter of October 10, 1964, reproduced later herein.

The Scope Rule of the Agreement between the parties, effective December 1, 1937, reads as follows:

"ARTICLE 1. SCOPE

(a) These rules and working conditions will apply to agents, freight agents, or ticket agents, agent telegraphers, agent telephoners, relief agents, assistant agents where they have charge of stations, take the place of or perform the work of an agent; telegraphers, telephone operators (except switchboard operators), tower-

There is also in effect between the parties a National Agreement dated August 21, 1954, copies of which, we understand, have been furnished the Board, and which are incorporated herein by reference.

Pertinent rules from the above mentioned Agreements will be quoted later herein for the Board's ready reference.

Though not named, the Union's letter of July 27, 1965 to the Board seeks to vaguely identify the claimants as "incumbents of towermen positions at North Tower and South Tower at Dallas, Texas."

Most of the switches throughout this passenger terminal facility are remotely controlled by levermen stationed in the north and south interlocking towers, at each of which one such employe is on duty on each eight hour shift — around the clock — seven days a week. These employes manipulate the remote switch and signal controls to allow movements of the Terminal Company's switch engines, and the movements of the trains and engines of the eight proprietary railroads while occupying the tracks of the Terminal Company.

As has been true for as long as any present employe, officer, or supervisor of the Company can recall, which actually goes back to 1916, when the subject towers were constructed, the levermen have brought their lunches, and have taken their allotted time for eating at such times as not to interfere with the flow of traffic. No designated time was arbitrarily set, and the contract has never so required. This practice had been in effect long before the current Labor Agreement was negotiated, and it has remained in effect continuously thereafter, for a period of some 28 years, without any claim or protest from anyone. The instant alleged dispute is the first of its kind, and, as we understand it, the purpose of the Union is to penalize the Company twenty minutes' overtime per shift per day at each tower, or have the Company arbitrarily set a certain twenty minute period per shift for the levermen to observe each and every day as a "lunch period." This would be utterly impracticable, because the movement of trains and engines varies from day to day. The only solution is the one which has always been in effect, and which is entirely compatible with the Agreement, that is, the levermen, who are in the best position of anyone to know when the twenty minutes can best be taken, make such determination on a day-to-day basis. Such has been the practice for almost forty years, and for 28 years under the presently effective Agreement.

**OPINION OF BOARD:** Claimants are the incumbents of towermen positions of North Tower and South Tower in Dallas, Texas. Their claim is based on Rule VII(a) of the Agreement between the parties hereto, which reads as follows:

> "Eight consecutive hours, exclusive of the meal hour, shall constitute a day's work, except that where two or more shifts are worked, eight consecutive hours with twenty minutes allowance for meals shall constitute a day's work."

Claimants allege that they have been denied twenty minutes in which to eat their meal, as guaranteed them under the above quoted rule.

In a petition to the Carrier, the Claimants requested that they be "allowed to take the twenty minute meal period provided in the agreement." The petition, in effect, asked the Carrier to assure the Claimants of some twenty minute period in which they could eat their lunch.

The rule under consideration is to apply to situations where eight consecutive hours are worked without a meal period. During that eight hours the employes are to have some twenty minutes in which to eat.

During the handling on the property, the Organization alleged that the Claimants at no time had an uninterrupted period of twenty minutes in which to eat their lunch. The claim was summarily denied by the Carrier.

## JURISDICTION

The Carrier has alleged that the Board is without jurisdiction in this matter, as the claim was not processed in accordance with the provisions of the Railway Labor Act or Article V of the National Agreement. It is the contention of the Carrier that the claim was not processed on the property up to the highest Carrier officer authorized to handle same.

This argument is without merit. The record clearly indicates that the Organization made every reasonable effort to compose and settle the claim on the property.

## MERITS

It is the opinion of the Board that the twenty minutes referred to in Article VII(a) means twenty consecutive minutes. The only reasonable interpretation of the rule is that at some time during the eight hour period the employe is to have some twenty consecutive minutes during which he can eat. The rule does not require that a specific twenty minute period be set aside. The Carrier's obligation under the rule is to schedule the work and personnel so that at some time the employes have twenty consecutive minutes in which to eat. Obviously, twenty one-minute periods would not fulfill the function of a twenty minute meal period.

The Claimants alleged on the property that they have not had the twenty consecutive minutes in which to eat their lunch. The Carrier did not deny this during the handling on the property. It merely asserted that it didn't feel there was any basis for the claims. When pressed for a reason, it was not forthcoming. The Carrier's failure to deny the allegation on the property is fatal to its position. We will sustain the claim.

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1969.

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