



Award No. 17178

Docket No. TE-16430

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Louisville & Nashville Railroad Company (NC&StL District) that:

Carrier is violating the terms of an agreement between the parties hereto, by:

(a) Failing and refusing to allow twenty (20) consecutive minutes without deduction in pay, in which to eat, during each eight (8) hour tour of duty, to employes performing service at East End Avenue Interlocking Tower, Chattanooga, Tennessee.

(b) Failing and refusing to compensate employes of said positions for amount of twenty (20) minutes at pro-rata rate of their positions for service performed in lieu of lunch period.

(c) Carrier shall compensate employes assigned to East End Avenue Interlocking—First Shift, L. C. Crownover; second shift, C. E. Shelley; third shift, T. O. Henry; relief, J. W. Newton and H. L. Kelly, and their successors, an amount equal to twenty (20) minutes at pro-rata rate of \$2.6328 per hour for each date on which service is performed, retroactive sixty (60) days date of this claim, and on each successive day thereafter, unless lunch period as provided in Article 12(b) is allowed.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Louisville & Nashville Railroad Company (NC&StL District), hereinafter referred to as Carrier, and its employees in station, tower and telegraph service, hereinafter referred to as Employees, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Union, effective September 1, 1949, as amended and supplemented, is available to your Board and is, by this reference, made a part hereof.

At page 41 of said Agreement is listed the positions existing at East End Avenue Tower on the effective date of said Agreement. For ready reference the listing reads:

**"1st Trick Opr. Lv.
2nd Trick Opr. Lv.
3rd Trick Opr. Lv."**

from date of claim, for 20 minutes at pro rata rate for service performed in lieu of lunch period, stating in part carrier was "... failing and refusing to allow twenty (20) consecutive minutes without deduction in pay, in which to eat. . . ." Copy of claim is herewith filed as Carrier's Exhibit "A."

This claim was progressed in the usual manner up to the Personnel Department. Copies of pertinent correspondence exchanged in progressing of the claim are herewith filed as Carrier's Exhibits "B" through "Z" and "A-1" through "F-1."

(Exhibits not reproduced.)

OPINION OF BOARD: The issue is whether or not Carrier violated the Agreement when it failed to allow Claimants a designated 20 minute period of time for lunch.

The controlling rule in this dispute is Article 12(b), which provides as follows:

"At other than one-shift offices employees shall be allowed twenty (20) consecutive minutes without deduction in pay, in which to eat, during each tour of duty."

The Organization contends that this rule obligates Carrier to designate and allow an employee a continuous period of time in which to eat during his tour of duty.

The Carrier's position is that by custom and past practice an employee, in other than a one-shift office, would select a time convenient for his lunch period and if company business interrupted said period, then he would be entitled to commence a new 20 minute lunch period; that the selection of a meal period time is made by the employee and that it is not necessary for him to obtain permission to take his said lunch period.

Claimants herein are occupants of East End Tower Positions at Chattanooga and claim that they have not received 20 consecutive minutes as a meal period, but that their 20 minute lunch period time is constantly interrupted by pressing Carrier business thus preventing them from receiving a "continous" meal period of 20 minutes as authorized by said Rule 12 (b) of the Agreement.

First, Rule 12(b) is clear and unambiguous and therefore past practice cannot be relied upon to sho the intent and meaning of said Rule. Thus Carrier's contention that by past practice the employee designated his own lunch period subject to interruption for Carrier business, is without merit and cannot be considered in deciding this dispute.

A reading of said Rule 12(b) shows that it clearly provides for "twenty consecutive minutes" . . . for which to eat during each tour of duty. This does not mean therefore as Carrier would have us believe, that pressing company business can interrupt said period, and then the 20 minutes starts over again. Webster's New Collegiate Dictionary defines "consecutive" as: "Succeeding one another in a regular order, series, or consequence; without interval or break." Therefore Carrier argument that the meal period once started can be interrupted by pressing company

business is without merit. Carrier, thus is required by said Rule 12(b) in this instance to allow Claimants herein 20 consecutive minutes in which to eat during each tour of duty. (Emphasis ours.) Although the rule is silent as to when an employe shall specifically take his lunch period, nevertheless, the burden is upon the Carrier to see to it that its personnel have twenty consecutive minutes in which to eat during an employes' tour of duty. See Award 17035.

Therefore, it is the conclusion of this Board that Carrier violated the Agreement and the claim must be sustained.

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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1969.