



Award Number 17947

Docket Number TE-17763

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The New York, New Haven and Hartford Railroad Company, that:

1. Carrier violated the Agreement between the parties when it failed to compensate Agent-Telegrapher A. J. Wall, Forest Hills, Massachusetts, for a second meal period after working more than two hours overtime continuous with his regular assignment.
2. Beginning December 20, 1966 and continuing until the situation is corrected Carrier shall compensate A. J. Wall for twenty minutes at the time and one-half rate of his position each working day.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties dated September 1, 1949, as amended and supplemented is available to your Board and by this reference is made a part hereof.

This claim was timely presented, progressed under the terms of the agreement, including conference with the highest officer designated by the Carrier to receive appeals, and has been disallowed. The Employees therefore appeal to your Honorable Board for adjudication.

This claim arose because of Claimant's position requiring that he work more than two hours overtime continuous with his regular assignment and due to the requirements of the service not being allowed twenty minutes for a second meal period.

(b) ISSUE

Is an employee entitled to be compensated for twenty (20) minutes at the time and one-half rate when he is required to work more than two hours overtime continuous with his assignment without being allowed to go to meals?

(c) FACTS

Copy of Agreement dated September 1, 1949, as amended, between the parties is on file with this Board and is, by reference, made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: Petitioner, a regularly assigned Agent-Telegrapher at a one man station at Forest Hills, Massachusetts, worked assigned hours 6:30 A.M. to 6:00 P.M., Monday through Friday, thereby working two and one half hours overtime continuous with his assignment. The Claimant is required by the nature of the work to remain on duty during his entire work period.

The question involved herein is whether the Petitioner is entitled to be paid for twenty (20) minutes at time and one half when he is required to work more than two hours overtime continuous with his assignment, without being allowed to go to meals.

Employees contend that claim of Petitioner is governed by the provisions of Article 8(d) of the Agreement and that payment is therefore required.

Carrier's position is that the Petitioner made no effort or attempt during a three year period to obtain time for a meal period and therefore it can not be claimed that he was denied the meal period. Carrier maintains that the phrase in Article 8(d) which reads "without being permitted to go to meals" must be interpreted to mean that the employee must first request permission to be relieved. If request is made and permission is not granted by his supervisor, then the employee is entitled to be paid.

The Board is of the opinion that the three year period from 1963 to 1966, when no claim was made by Petitioner, is not of sufficient time to be a controlling factor in the resolution of this matter.

We can not agree with the Carrier's interpretation of the meaning of the phrase "without being permitted to go to meals". Article 8(d) clearly states that payment shall be made if such "meal period is not allowed". In view of the fact that payment is required when the meal period is not allowed, it must be the conclusion that such payment is not contingent upon a request by the employee for permission to take such meal period. The Rule does not place upon the employee the responsibility to ask for a meal period but rather imposes an obligation upon the Carrier to allow a meal period or pay the employee for his loss of opportunity to enjoy such meal period. Support for this conclusion is found in Award 3943 which states in part:

"* * * The provision does not say that the employee shall take twenty (20) minutes when he finds that the nature of the work permits but it says that he 'shall be allowed' by the Carrier this time within which to eat. It places the control of this time with the Carrier.

"Also this appears to be the reasonable interpretation to be placed upon the provision since it is properly a prerogative of management to ascertain and determine when and in what circumstances the nature of the work of the Carrier will permit the temporary release of an employee engaged in continuous service. See Award 2855. * * * *"

Further support for the conclusion herein are found in Awards 2855, 3001, 3943, 4054 and 4276.

We are of the opinion that Article 8(d) of the Agreement was violated and the claim of the Petitioner should 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 Carrier violated Article 8(d) of the Agreement.

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 1970.