



Award No. 18949
Docket No. TE-19018

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Lehigh Valley Railroad that:

1. The Carrier (Lehigh Valley Railroad) violated our agreement on June 15, 1969 and July 1, 1969 when it failed to compensate

Claimants as listed for meal periods due them for the month of June 1969, said compensation being held in abeyance from them in the various amounts as follows:

NEWARK TOWER, Newark, N.J. Pro rata \$3.6807, Punitive \$5.5211

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Name	Period	Hours	Amount	Period	Hours	Amount
T. A. Kiebler	1st	3 1/3	18.40	2nd	3 3/4	20.24
Leroy Hendrix	1st	3 3/4	20.24	2nd	3 1/3	18.40
B. K. Kantner	1st	2 1/2	12.88	2nd	1 3/4	9.20
Emmett Jacobsen	1st	2 1/2	12.88	2nd	2 1/2	12.88

EASTON TOWER, Easton, Pa. Pro rata \$3.6807, Punitive \$5.5211

J. S. Glenn	1st	3	16.56	2nd	3 3/4	20.24
C. W. Merwarth	1st	3 1/3	18.40	2nd	4 1/3	23.92
W. G. Baker	1st	3 1/3	18.40	2nd	3 1/2	18.40
W. B. Mackey, Jr.	1st	4	22.08	2nd	2 3/4	14.72
R. L. Remaley	1st	1 1/2	7.36			
R. J. Morey	1st			2nd	1	5.52

BETHLEHEM TOWER, Bethlehem, Pa. Pro rata \$3.2947, Punitive \$4.9421

Frank Ketulka	1st	3	14.43	2nd	4	19.77
H. B. Stermer	1st	3 3/4	18.12	2nd	2 3/4	13.18
Felix Basta	1st	3 3/4	18.12	2nd	3 3/4	18.12

Carrier submits that to agree to and arrange for a so-called "joint check" in this case could have had only one result; in each instance employe could be aware of the check and arrange accordingly not to have lunch period available.

Actually Carrier representatives made a check and Carrier Exhibits "L-2," "M-1 and 2," "N," "O," "P," "Q," "R," "S," and "T," show the actual situation; some of which included reading material, exercise bar bells and weights, radio, personal typewriter being used for non railroad activities.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is based on an alleged violation of Rule 14(b) of the Agreement between the parties which reads as follows:

"(b) Where two or more shifts are worked, employes shall be allowed twenty (20) consecutive minutes for meal, which need not be regularly assigned, without deduction in pay, between the ending of the third and the beginning of the sixth hour of the tour of duty."

The Carrier has denied through the handling on the property that a situation existed whereby the employes did not have twenty consecutive minutes in which to eat.

The Organization has not come forth with evidence of probative value to substantiate the Claims. They have, however, relied heavily on the refusal of the Carrier to join with the employes in a joint check as an admission against interest.

The Carrier is under no obligation to aid the Claimants in the development of their claim. We do not agree with the contention of the Organization that this matter is of such a nature that the refusal of the Carrier to enter into a joint check resulted in an admission against interest.

The Carrier submitted that the Block sheets indicate that the twenty minute period was available. Further, the Carrier conducted a unilateral check to determine the validity of the allegation. It also requested each employe to explain when he was unable to take his twenty minute lunch period. There was no reply from the employes. We cannot agree that the Carrier "sat on his hands" in the instant matter and refused to attempt to solve the problem on the property.

The burden of proof has not been met by the Claimants. Accordingly we will deny the claims.

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

on the ground and could find no reason why the employes could not eat their lunch without creating a hazard to their health, as claimed.

As to a joint check, carrier has no obligation to agree to a joint check requested and, further, does not feel such a joint check would serve any constructive purpose. The check made by carrier representative developed the true facts in this situation as far as this carrier is concerned.

Yours very truly,

/s/ M. W. Midgley
M. W. Midgley

(f) Authorities Relied On

Third Division Awards: 1256, 7785, 7839, 12957, 13039, 17035, 17178, and 17179.

CARRIER'S STATEMENT OF FACTS: There is in effect on this property an agreement between the T-C Division-BRAClerks (formerly T. C. U.) and the Lehigh Valley Railroad Company, effective February 1, 1948 which, by this mention, becomes part of Carrier's Submission.

Also part of Carrier's Submission are Carrier's Exhibits "A" through "V."

On the payroll submitted for incumbents of T-C Division, BRAC positions at Easton, Newark, Bethlehem and Lehigh, the only four towers on this property between Jersey City, N. J., and Coxtan, Pa., a railroad distance of 185.5 miles, there appeared a notation of $\frac{1}{2}$ of an hour payable at punitive rate each day for which it was shown account "No Lunch," beginning with June 1, 1969.

Carrier immediately addressed an individual letter to each of the employes whose names appeared on the payrolls. (Please see Carrier's Exhibit "A" as a copy of the form letter used). There were no replies received from any of the claimants to explain the payroll notation.

At the same time, (Carrier's Exhibit "C-2") employes attempt to make an offset to the record as shown by the block sheets, by stating "* * * even though the Block Records MAY SHOW that Claimant has more than 20 minute intervals in some cases, this does not reflect the other work * * *"

Then, we ask, why not claimants respond to the Carrier's request for explanation (Carrier's Exhibit "A")?

The fact is the block sheets do show that opportunity did exist for claimants to obtain twenty minutes consecutively for lunch period between the end of the third hour and beginning of the sixth hour as stipulated by Rule 14 (b) of the schedule.

The further fact is that a check by Carrier representative unannounced, developed many variations of the lunch theme at the towers involved.

There were some employes who, of their own volition, ate their lunch shortly after going on duty. Several ate no lunch altho time was available.

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1972.