NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20061
Docket Number SG-19854

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Railway Company that:

(a) Carrier violated and continues to violate the provisions of the current Signalmen's Agreement, as well as past practice, when Signal Supervisor A. F. Cherveny informed the signal crew headquartered M'town, and working on the installation of crossing gates at LaMoille and pole line between M'town and State Center, that the Carrier would no longer allow travel time to obtain their noon meals, and denied compensation for work performed under Rule 75 (Revised) during the noon period.

(b) Carrier now be required to compensate the following members of Signal Crew #2 for meal period worked, under Rule 75, and compensate the members of Crew #2 shown below, for the dates noted, at their straight-time rates, account this violation, per Rule #26.

D. C. Gordon	- Jan. 27, 28, Feb. 1, 2, 3, 4, 8, 10, 11, 16, 17, 22, 23, 24, March 1, 2, 3, 4, 8, 22, 24, 25, 29, 30, April 1, 1971.	Total 25 hours.
P. J. Miller	- Jan. 27, 28, Feb. 1, 2, 3, 4, 8, 10, 11, 16, 17, 23, 24, March 1, 2, 3, 4, 8, 1971.	Total 18 hours.
J. E. Hansen	- Jan. 27, 28, Feb. 1, 2, 3, 4, 8, 10, 11, 16, 17, 23, 24, March 1, 2, 3, 4, 8, 22, 24, 25, 29, 30, April 1, 1971.	Total 24 hours.
N. E. Nabers	- Jan. 27, 28, Feb. 1, 2, 3, 4, 8, 10, 11, 16, 17, 22, 23, 24, March 1, 2, 3, 4, 8, 22, 24, 25, 29, 30, April 1, 1971.	Total 24 hours.
W. B. Harrington	- Jan. 27, 28, Feb. 1, 2, 3, 4, 8, 10, 11, 16, 17, 18, March 1, 2, 3, 4, 1971.	Total 16 hours.

/Carrier's File: 79-3-93/

OPINION OF BOARD: The claim is that the Carrier discontinued a policy of allowing signal crew employees to travel on company time for the noon meal, and that such action violated Rules 26 and 75 of the Agreement, as well as past practice. The Carrier denies that such a practice existed. Carrier also says that, in order to stop an abuse of the noon meal period, it merely required the employees to adhere to the one hour allowed for the noon meal period, 12 noon to 1:00 p.m. as permitted by Rule 7.

Rules 7, 26, and 75 read as follows:

"7 . . . .
Except as otherwise mutually agreed to, where one shift is employed a meal period will be not less than thirty minutes nor more than one hour, and will be regularly established between the ending of the fourth and beginning of the seventh hour after starting work."

"MEAL PERIODS WORKED. 26. Except where employes are allowed twenty minutes for meal period, without deduction in time, employes required to work during any part of the assigned meal period will be compensated for meal period at straight time rate, and will be allowed necessary time, not to exceed thirty minutes, to procure meal at first opportunity, without deduction in compensation."

"REVISED RULE 75:

Employes operating track cars must secure a dependable train line-up. Motor track cars will be equipped with electric head and rear lights, suitable cushions, windshield and windshield wiper and proper leverage for handling cars on and off track. Operating or riding track cars, motor cars or other conveyances such as Chicago and North Western trucks, highway vehicles, etc., in connection with employe's assignment is work and will be compensated as such under rules governing."

These rules do not on their face indicate agreement on a noon meal period of more than one hour in duration; however, if a longer meal period established by past practice has been reduced to one hour by the Carrier's action, the employees would be working without extra pay or compensatory time-off during part of the meal period as established by past practice. We must therefore examine the issue of past practice as raised in the following extract of the General Chairman's letter of May 12, 1971:

"On or about January 26, 1971 Mr. Cherveny, Signal Supvr. informed the members of crew #2 of the Western District that he would no longer allow travel time to obtain their noon meal. This committee feels that this is in violation of Rule 75 of the current Agreement and therefore should be paid as stated under (b) of this claim under Rule 26.

Rule 75 reads in part; '... Operating or riding track cars, motor cars or other conveyances such as Chicago and North Western trucks, highway vehicles, etc., in connection with employe's assignment is work and will be compensated as such under rules governing.'

Under this order by the Signal Supvr., these men had to drive and/ or ride the Company truck or motor car during their noon meal period in order to obtain their noon meal. When the crew had a cook the crew traveled to their camp which is their headquarters under Rule 17, on Company time. This is past practice on every District and no one can deny this. When the Carrier removed the cook and placed the crew on expenses for meals it became the Carriers duty to see that these men can get to a place to obtain their meal. The Carrier has full control where it locates its camp and works the men.

If the Carrier wants these men to travel from the work point to the headquarters or a place to obtain their noon meal during the noon meal period, they will have to compensate them under rule 26 as stated in this claim.

Past practice enters into this same situation when in October 1962 on the Northwestern District this same incident arose. After conference between you and Mr. LeBaron then General Chairman held November 6th and 30th 1962 this was resolved. It seems strange that this is now happening on the Western District where the signal officials are the same ones that were under the domain of Mr. Searles, Signal Supr. on the Northwestern District.

Mr. Cherveny's denial states that a noon meal period consists of not less than 30 minutes or more than one hour. This is correct, but if the Carrier is going to order the men to ride, drive or run a motor car or truck during their noon meal period they are in violation of Rule 75 unless they are compensated under Rule 26."

In a reply letter dated June 30, 1971, the Carrier's Signal Engineer stated that:

"It is my understanding that Mr. Cherveny found that the crew employees were away from the property for a minimum of one hour to as much as 2 hours during the lunch period, with a large portion of the time being spent by the employees, on their bunks in the

"camp cars. It is my further understanding that Mr. Cherveny informed the employees that this practice must be discontinued and that they could either carry their lunch and eat at the work site or else they would be permitted to utilize company vehicles, either track or roadway, to obtain their lunch at a restaurant. In no way were the employees ordered to drive a truck or motor car during their lunch hour."

In reference to the Signal Engineer's statement about a 1 to 2 hour absence from the property for the noon meal, the General Chairman made the following comment in a letter dated July 29, 1971:

"This claim is a combination of two claims submitted to Mr. Cherveny, and Mr. Mitchell, as far as the dates for compensation is concerned. In Mr. Mitchell's denial of the claim he states in part; '...It is my understanding that Mr. Cerveny found that the crew employees were away from the property for a minimum of one hour to as much as 2 hours during the lunch period, with a large portion of the time being spent by the employees, on their bunks in the camp cars.'

Now just who is Mr. Mitchell trying to kid. I do not believe any Signal Supvr. would allow this to happen without retaliation. Also, if the crew was away from the property from one to two hours, how could they spend a large portion of this time on their bunks in the camp cars. The camp cars are always on the property. This denial of the Signal Engineer, Mr. Mitchell in all reality does not have any merit."

In their Submission the Employees state that, because the Carrier took no exception to the local chairman's or general chairman's statements about past practice, those statements must be accepted as correctly reflecting what the practice has been. Contrarily, however, the Carrier's Submission states that if some foreman allowed his crew to travel to lunch on company time, this fact alone did not amend the Rule 7 language limiting the noon meal period to one hour. Further denial of the alleged past practice was made by Carrier's production of correspondence which not only shows that this same issue was in contention on this property in July and August 1962, but also shows that Carrier's position then was the same as the one advanced in this dispute.

On the basis of the foregoing, and the whole record, we can but conclude that the Employees have failed to establish the existence of the alleged past practice by probative evidence. The assertions of past practice in the General Chairman's letter of May 12, 1971 are in the nature of conclusionary statements or statements of ultimate fact and it is axiomatic that such statements, when challenged, must be supported by evidence of the specific facts leading to the ultimate conclusion. No such evidence has been offered by the Employees, while

the Carrier, on the other hand has offered the 1962 correspondence in refutation of the alleged past practice. This correspondence is not so complete as to disprove the existence of the past practice in definite and final terms; however, the correspondence is the only evidence of record bearing upon the existence or non-existence of the past practice and, so far as it goes, it provides some evidence that the practice did not exist. We therefore conclude that the signal crew employees were bound to observe a one hour noon meal period and that Carrier was within its rights in insisting that they do so. Seen in this light, our denial Award 16254 becomes relevant. There, the employees filed claims after they were instructed that the noon meal period lasted for one hour and that they would not be permitted to take longer. Essentially the same fact obtains in this dispute and we shall deny this claim also.

For the foregoing reasons we shall deny 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 was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A W Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1973.