

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20914
Docket Number MW-20766

Louis Norris, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Northwestern Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to compensate B&B Foreman H. J. Strock for the services he rendered during his assigned meal periods on each work day* within the period beginning with November 16, 1972 and extending through January 8, 1973 (System Files MofW 125-268 and MofW 125-270).

(2) B&B Foreman H. J. Strock now be allowed thirteen (13) hours' pay at his straight-time rate because of the aforesaid violation.

*The work days of November 17, 21, 22, 23, December 8, 15, 19 and 28, 1972 and January 6, 1973 are excluded because payment was allowed for the services rendered by the claimant during his meal periods on said dates.

OPINION OF BOARD: In this dispute, Petitioner asserts that Carrier violated the Agreement when it refused to compensate Foreman H. J. Strock for services rendered during his assigned meal periods on stated work days. Compensation is demanded as detailed in the Statement of Claim.

Petitioner contends that under the Form "Y" train order then in effect, the foreman was required to be on constant duty and to remain available; that Claimant's responsibility was continuous throughout his meal period and, therefore, his meal period time must be considered compensable working time under Rule 30 of the controlling agreement.

Conversely, Carrier urges that during such periods when "no train could possibly be in the work area" Claimant had sufficient uninterrupted time for his meal periods and that no compensation was warranted in these circumstances. On this premise, Claimant was in fact compensated for meal periods during other days when trains actually passed through the work area.

At the outset, we sustain Petitioner's procedural objection to our consideration of various train schedules now submitted by Carrier for the first time. These constitute new matter not presented during the processing of this case on the property and, accordingly, will not be considered as bearing on the merits of this dispute. Innumerable prior Awards of this Board have consistently sustained this principle regarding inadmissibility of "new matter".

See Awards 19101, 20064, 20121, 20255 and 20841 among a host of others.

On the merits, we are conclusively persuaded by the reasoning and conclusions in Award No. 18153 (Dugan). There, as here, a Foreman was involved who was required to remain "on duty" during his meal periods. There, as here, a specific "U Train Order" was in effect (substantially similar to the Form "Y" train order in this dispute), placing specific responsibility upon the Foreman to ensure the safe passage of trains through the work area. There, as here, periods were involved when "no trains passed through the work area". Nevertheless, the claim was sustained.

Carrier contends, and properly so, that this Board's jurisdiction is limited to interpretation of the Agreement as written, and in context; and urges that Petitioner, in order to prevail, must establish a specific Rule in violation. We agree, but must perforce point out that Rule 30 is precisely applicable to the instant dispute. Furthermore, that the language of Rule 30 is exactly the same as Rule 23 in Award 18153, *supra*.

We conclude, therefore, that the issue for adjudication here is on all fours with that decided in Award 18153, as follows:

"Is the Claimant entitled to payment for working the noon lunch period only when a train passes through his area on said lunch period, or is he entitled to payment for said lunch period when a U Train Order is in effect and no train passes through his area during said period?"

Additionally, the conclusion reached in the latter Award is directly in point and fully applicable here:

"We believe that when a U Train Order is in effect, as in this instance, Claimant was required to remain on hand at all times in order to avoid any unnecessary train delays and work with the dispatcher and engineer of any through trains so as to insure the safe passage of said trains through the work area. Claimant was thus required to perform service of a standby nature and in effect did perform service regardless of the fact that no trains passed through his work area on the dates in question during his noon lunch hour period."

To the same effect, albeit with varying factual situations, see Awards 826, 1070, 1675, 2032, 2640, 10969 and 20369.

For further emphasis, see also:

Armour & Co. v. Wantock (U.S. Supreme Court, 323 U.S. 126) (1944).

Skidmore v. Swift & Co. (U.S. Supreme Court, 323 U.S. 134) (1944).

Carrier urges the general proposition, citing precedent, that it has the sole prerogative to make, change or interpret its own operating rules. We agree with this concept in principle, provided the Agreement is not violated thereby. We cannot, however, accept such proposition as controlling in this dispute in the absence of some probative evidence indicating notice to Claimant that he was relieved of the responsibilities initially imposed upon him by the Form "Y" train order. In short, that he was not obliged to remain on duty continuously during his meal period. Clearly, he had no authority to make such determination on his own, which in itself might conceivably subject him to discipline.

Accordingly, based on the record evidence and controlling authority, we find that Claimant was required to remain on duty during the meal periods here in question and that such time falls within the compensable coverage of Rule 30 as constituting time "if worked". We will therefore 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 Employee involved in this dispute are respectively Carrier and Employee 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: G.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1976.