

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21029
Docket Number CL-20824

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7570) that:

1. Carrier violated Rule 23 of the Clerks' Agreement when it failed and refused to allow Mr. Vernon Romay, Control Operator, South Dupo, Illinois, twenty (20) minutes in which to eat, June 3, 4, 7, 8, 9, 10, 11, 12, 13 and 14, 1973. (Carrier's File 380-3118)

2. Carrier shall now be required to compensate Mr. Vernon Romay for twenty (20) minutes' pay at punitive rate on each of the aforementioned dates he was not allowed twenty (20) minutes in which to eat.

OPINION OF BOARD: On the dates in question, Claimant was assigned to Carrier's control tower at South Dupo, Illinois from 7:00 a.m. to 3:00 p.m. The location is a major control tower maintaining around-the-clock service, seven (7) days per week.

Claimant asserts that his requests for a twenty minute meal period were declined, which violated Rule 23, and that he was, therefore, entitled to compensation at the punitive rate.

Rule 23 states:

"(a) When a meal period is allowed, it will be between the ending of the fourth hour and the beginning of the seventh hour after starting work, unless otherwise agreed upon by the employing officer and the General Chairman.

"(b) A meal period shall not be less than 30 minutes nor more than one hour unless agreed to by the employing officer and the General Chairman.

"(c) For regular operations requiring continuous service, eight consecutive hours, without a meal period, may be assigned as constituting a day's work; 20 minutes without deduction in pay shall be allowed an employee in

which to eat within the period limits specified in Section (a) of this rule. The 20 minutes allowed to an employee in which to eat need not be at the same time each day but instructions relating thereto should be specific.

"(d) For work performed during his meal period an employee will be paid on the minute basis at the rate of time and one-half. If after working a portion of the assigned meal period less than 20 minutes remain therein, the employee will be allowed sufficient additional time off without deduction in pay to give him 20 minutes in which to eat at the first opportunity.

"(e) An employee required to work overtime continuous with his regular assignment will be allowed a second meal period of 20 minutes without deduction in pay not later than the end of the sixth hour after the ending of the first meal period. If the employee is granted permission to take more than 20 minutes no pay will be allowed for such additional time."

Carrier raises certain questions as to whether or not it precluded Claimant from taking time to consume a meal, and, in any event, it urges that Rule 23 is satisfied if the employees are afforded twenty minutes - which need not be continuous - because "... the needs of service will not permit employees assigned to such positions to have 20 uninterrupted minutes or permit them to leave the proximity of their tower."

As we view the entire record, we conclude that the determining factor is whether or not Rule 23 requires that the "twenty (20) minutes" must be "consecutive". In the treatment of the matter on the property as well as in presentations to this Board, the distinction has been drawn between a twenty (20) minute "meal period" and granting of a total of twenty minutes (not necessarily uninterrupted) during which an employee may eat. In fact, the Carrier has suggested a substantial variance between the claim handled on the property and that submitted to this Board in this regard.

On the property, Claimant asserted that certain named Yardmasters had declined a request for "a twenty minute meal period". After the Organization objected to a denial of that assertion, the Superintendent did concede, on August 24, 1973, that the Yardmasters did refuse to let Claimant "take his meal period". However, based upon subsequent correspondence, it is difficult to ascertain if the parties were drawing the "consecutive" distinction regarding said time period.

We do not feel that there has been a variance of claims. Granted, both parties have interchanged words and phrases regarding the twenty minute concept, but we read the entire claim as requesting a twenty consecutive minute period of time for food consumption.

We have studied the pertinent Rule at length and applied it to the facts as developed on the property. Quite candidly, the exchange of correspondence on the property has failed to assist by means of showing a controlling practice, prior to integration of agreements, nor has it provided us with very much to consider other than the precise words of the Rule. Our task is not made easier by the fact that the language of the Rule is not as precise as it could be relating to this dispute.

We note, in Rule 23(c) that Carrier may schedule for eight consecutive hours without a meal period - but, 20 minutes shall be allowed an employee to eat within the meal period limits (between the ending of the fourth hour and the beginning of the seventh hour) and the 20 minutes allowed to an employee in which to eat need not be at the same time each day. Thus, it is obvious that the twenty minutes (consecutive or not) must be provided within a certain time frame.

While the parties seem to recognize the difficulty of providing a specific pre-designated meal period, nonetheless, they do provide that certain time should be set aside for the employee to eat. The logical result of Carrier's "non-consecutive" concept could be twenty one-minute periods (see Award 17035) and we question that the parties intended such a result. But, clearly, a denial Award would permit such a construction.

While we freely concede that reasonable minds may differ on the applicability of Rule 23, we feel that certain language of Rule 23(c) controls.

If, as noted, the twenty minutes need not be consecutive, at least they must be within a two hour period. However, the Rule states specifically that the twenty minutes allowed need not be the same time each day. If the parties did not envision a consecutive period, then said language would be totally superfluous and meaningless because, obviously, if the time could be doled out one minute at a time, there would be no question of being concerned with different times during the two hour period. We conclude that the parties did not include meaningless language, and therefore they intended that - although the starting time could vary each day - the minutes would be consecutive in nature.

Having so determined, we find that it is appropriate, under the concepts of Rule 23(d) to Award pay at the punitive rate.

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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: A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1976.

14641

CARRIER MEMBERS' DISSENT TO AWARD 21029, DOCKET CL-20824

(Referee Joseph A. Sickles)

We dissent. The matters of record which clearly establish this claim is invalid are discussed in the memorandum submitted by the Carrier Members. That memorandum is retained in the Master File and by reference is incorporated in this dissent.

W. J. Taylor

W. F. Fisher

P. C. Carter

Johnson

Edm. Youder