

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21663
Docket Number CL-21556

Robert W. Smedley, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Canadian National Railways, St. Lawrence Region,
(Lines in the United States

STATEMENT OF CLAIM: Claim of the T-C Division System Committee of the
Brotherhood (GL-8135), that:

1. Carrier violated the Agreement between the parties when, commencing March 6, 1975, it discontinued meal period allowances of one hour to employees assigned to one-shift positions on its New England Line.

2. Carrier shall, as a result, compensate J. G. Pomerleau, Operator, South Paris, Me., D. N. Fournier, Operator, Groveton, N.H., J. W. Proulx, Agent-Operator, North Stratford, N.H., G. G. Guay, Agent-Operator, Island Pond, Vt., J. V. Leclerc, Swing Agent-Operator, Island Pond and Berlin, Vt., and J. L. Naud, Relief Agent, Berlin Sub, one (1) hour's pay at time and one-half rate for each work day commencing March 6, 1975 until violation is corrected.

CARRIER DOCKETS: 8005-520 COMMITTEE DOCKET: 302-38
8307-12G

OPINION OF BOARD: The six claimants work on one-shift operations. Up through March 5, 1975, their daily assignments spread over nine consecutive hours consisting of eight hours' paid work broken by an assigned one-hour unpaid meal period. The contract provides that if they were instructed to work over the meal time, they would get one hour's pay at time and one-half and be excused as soon thereafter as possible to eat, without deduction in pay. Those assigned eight consecutive hours of work do not get an assigned one hour unpaid meal period but instead are allowed twenty minutes for lunch when conditions permit, without deduction in pay.

Apparently because conditions required frequent assignment of claimants' one-hour lunch to time and one-half work, carrier changed the shifts to straight eight-hour assignments. This was done under authority of agreement, Article 11.2, which says:

"The hours of regular assignments will be specified by the Chief Dispatcher . . . and will not be changed without at least forty-eight (48) hours' notice."

The required forty-eight hours' notice was given for the change starting March 6, 1975. The employees object to the change, being mainly concerned over the loss of overtime opportunity.

Other pertinent contract provisions are:

Article 11.1: "Eight (8) consecutive hours, exclusive of meal period, shall constitute a day's work, except that where two or more shifts are worked, eight (8) consecutive hours with no allowance for meals (unless otherwise mutually agreed) shall constitute a day's work. A day's assignment will consist of not less than eight (8) hours except on rest days and specified holidays."

Article 11.6: "The employees whose assigned hours include a meal period will be allowed sixty (60) consecutive minutes for meal, starting either between 0700 hours and 0800 hours, 1200 hours and 1300 hours, 1730 hours and 1830 hours; or receive in lieu thereof one (1) hour's pay at time and one-half time if instructed to work by the supervisory officer, and will be excused as soon thereafter as possible, to eat, without deduction in pay."

Article 11.7: "Employees working a straight eight (8) hour assignment will be allowed twenty (20) minutes for lunch when conditions permit, without deduction in pay."

We cannot agree with the carrier that there is no ambiguity in the foregoing parts of Article 11 of the contract. That would require reading Article 11.2 in isolation, giving the Chief Dispatcher the right to set the hours, period. But Article 11.1 strongly suggests, if not mandates, that the straight eight-hour assignments are reserved for two or three-shift operations and do not apply to the one-shift situation. Thus, there being room for debate on the meaning of the contract itself, we may look to past practice on the property, all of which supports the claim.

Part 2 of the claim asks for compensation. This would require evidence that compensation was lost. We are willing to believe that some unspecified number of overtime hours have been lost, but there is no way to tell from this record whether it has been one or five hundred hours per claimant. For time put in, they really only lost forty (40) minutes per day because they got their twenty (20) minute break with pay. Time and one-half on forty (40) minutes is one hour. To say that each and every workday all of the claimants would have gotten their overtime is pure speculation.

Yet integrity of contract requires more than reversal to the status quo, otherwise unilateral violation could take place with impunity. Some kind of convincer is required, and although there is no way to tell who will chortle their way to the bank, we award one hundred overtime hours to each claimant.

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 respectfully 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

The Agreement was violated.

A W A R D

Part 1 of the claim is sustained;

Part 2 of the claim is sustained as modified in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of August 1977.