

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26124
Docket Number CL-25843

Referee Robert W. McAllister

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9899) that:

(a) The Carrier violated the provisions of the Clerical Agreement in failing to properly assign a meal period to Telephone Operator, Position B-2, located on the Telephone Office Department roster, Pittsburgh District, at Pittsburgh, Pennsylvania from January 8, 1979 and,

(b) That Clerk Irene L. Semcoski, her successors or substitutes shall be compensated one (1) hour at the punitive rate and one (1) hour at the pro rata rate of \$65.84 per day in addition to other earnings for each work day beginning with the receipt of this claim, sixty (60) days prior thereto and continuing until the meal period of Position B-2 is properly assigned in accordance with the provision of the Clerical Agreement."

OPINION OF BOARD: On January 3, 1979, the Claimant was advised that her hours of assignment were changed from 7:00 A.M. to 4:00 P.M. to 8:00 A.M. to 5:00 P.M. effective January 8, 1979. Her meal period was changed to 11:00 A.M. to 12:00 Noon. Subsequently, on November 7, 1979, a Claim was filed on behalf of the Claimant based upon the assertion that under Rule 32, Section (b), the earliest her meal period could begin was 12 Noon. By letter of November 29, 1979, the Carrier informed the Organization the Claimant's lunch hour had been changed to 1:00 P.M. to 2:00 P.M. In that same letter, the Carrier denied any monetary portion of the Claim. Thereafter, the Carrier took the position that the Claim had not been handled in accordance with the position of Rule 27 1/2. The Carrier contended the Claim was not submitted to the proper Carrier Officer, and secondly, it had not been filed within sixty (60) days from the date of occurrence. The Organization argues this Claim is continuous in nature because the Carrier admittedly violated the provisions of Rule 32 each and every day the Claimant was required to observe an improper meal period.

It is evident the Carrier has acknowledged an Agreement violation took place when it changed the Claimant's meal period to a time earlier than permitted under Rule 32 (b). Notwithstanding, that event took place on January 8, 1979. A Claim was not filed until November 7, 1979, some ten months subsequent to January 8. Having reviewed the record and cited Awards, this Board finds the weight of authority supports the Carrier's position that the identifiable date when the Claimant's lunch hour was improperly changed took place ten months prior to the filing of the Claim.

We concur with the Carrier that the changing of Claimant's hours and meal period was a singular act on a date certain. There is no showing the Carrier repeated that act. Continuing liability is clearly distinguishable from continuous and repetitive acts which of themselves involve a series of Agreement violations. See Award 23953.

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

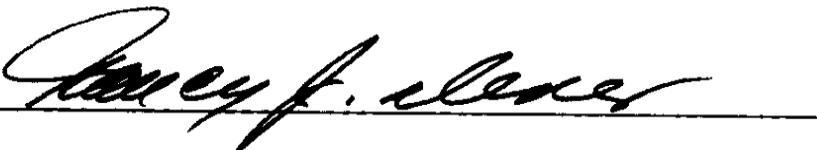
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1986.

