

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32148
Docket No. CL-32911
97-3-96-3-262**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11216) that:

(Corrected Time Claim)

The following claim is presented to the company in behalf of all Customer Service employees working any shift starting September 17, 1994, and continuing until this claim is resolved. This will include all persons working on the date of the beginning of this claim as ticket clerks, baggagemen, ushers, information clerks, red caps and any other position affected by the violations cited below. This claim will also include any employee acquiring any of the above-named positions after the first claim date of September 17, 1994.

The amount of money to be distributed to the particular claimants will be agreed to by the appropriate company officer and the Division Chairman at the time of settlement of this case. These positions are all located at Union Station, Washington, DC.

(a) The Carrier violated Amtrak Northeast Corridor Rules Agreement effective September 1, 1976, as amended and revised, particularly Rule 4-B-1, Meal Period, Rule 9-A-1 - Exception to the Rule 11-A-1 - Effective Date and Changes, Letter of Agreement of November 9, 1974 between C. W. Shaw, Jr., Manager Terminal Company and F. J. Kroll, General Chairman-BRAC, and the Washington

Terminal Company/Amtrak takeover Agreement signed July 11, 1984, which states in part, 'Employees occupying positions with the Washington Terminal Company as of July 31, 1984 will be transferred in place with similar tours of duty and rest days' which constitutes a signed agreement between the union and the company calling for an eight hour day with a 20 minute lunch included.

Therefore, to change this 20 minute paid lunch to a 30 minute or 1 hour unpaid lunch also requires an agreement with the Division Chairman of this organization.

This claim is to take effect beginning 12:01 a.m., September 17, 1994 in the Customer Service Department and is to continue each and every day until these positions are put back to an 8 hour shift with a 20 minute paid meal period, or an agreement is reached with the Division Chairman of this organization.

(b) All claimants now be allowed 30 minutes at the time and one-half of their applicable rate of pay for each and every shift worked starting with September 17, 1994 until this claim is resolved.

(c) Claim has been presented in accordance with Rule 7-B-1 and should be allowed."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

We note at the outset that the initial claim was filed by the Organization on November 10, 1994 and that the corrected claim as stated hereinabove in the Statement of Claim was filed November 15, 1994. The Board finds it was not necessary to the resolution of this dispute to also incorporate the initial Statement of Claim.

The record evidence reveals that prior to Amtrak assuming the operation of the Washington Terminal functions by a takeover agreement dated July 11, 1984, certain departments under the clerical agreement between the predecessor Company and then BRAC, permitted its employees to work an eight hour day with a built-in paid 20 minute meal period. Between the dates of July 11, 1984 and September 17, 1994 identified by the Organization as the first claim date, AMTRAK concedes it continued permitting Customer Service employees to continue working an eight hour day with a built-in paid 20 minute meal period. However, in and around September 17, 1994, AMTRAK changed the meal periods of the subject Customer Service employees to either 30 minutes or one hour unpaid periods in accordance with Rule 4-B-1(a) of the AMTRAK/TCU Northeast Corridor Clerical Agreement.

The Organization maintains the language in the 1984 Takeover Agreement requires a continuation of the eight hour day with a built-in paid 20 minute meal period which, in fact, it continued as a practice for over ten years, whereas, the Carrier argues that, since there is no language in any of the Rules or Agreements cited which would change the clear provisions of Rule 4-B-1, it has the managerial prerogative under Rule 4-B-1 to adjust its forces and assignments to fit operational needs.

In pertinent part, Rule 4-B-1 - Meal Period, reads as follows:

“(a) Unless agreed to by the Division Chairman and the designated official of the Corporation, the meal period shall not be less than thirty (30) minutes nor more than one (1) hour.

*** * * ***

- (e) Where Corporation's operation requires continuous service, eight (8) consecutive hours without meal period may be assigned as constituting a day's work in which not to exceed twenty (20) minutes shall be allowed in which to eat without deduction in pay."

The Organization avers that under Rule 4-B-1 meal periods of both types, that is, the paid 20 minute built-in meal period and the 30 or 60 minute unpaid meal period are both permissible, but asserts that pursuant to paragraph (a) as cited hereinabove, a change from one to the other requires agreement of the Organization's Division Chairman, which here the Carrier failed to seek or secure. Carrier concurs in part that paragraph (e) of Rule 4-B-1 as cited hereinabove, permits a built-in paid 20 minute meal period but it does so at its discretion and only at locations and/or departments which require 24 hour continuous service. Carrier argues that the positions referenced in the subject claim are not 24 hour or around-the-clock positions. In referencing the language of paragraph (a) of Rule 4-B-1, regarding an agreement between the Division Chairman and a designated official of the Corporation, Carrier maintains that notwithstanding the Organization's insistence such an agreement exists providing for an alternate built-in 20 minute meal period which agreement, Carrier notes, the Organization never produced, Carrier argues there is no agreement it knows of which would alter or amend the clear meaning and intent of paragraph (a).

In consideration of the record evidence in its entirety, the Board is persuaded that the positions referenced in the corrected claim are not part of a continuous 24-hour operation and, therefore, said positions are not subject to the language of paragraph (e) of Rule 4-B-1 which provides for a built-in paid meal period of 20 minutes. Additionally, absent any proof there exists an agreement that alters or amends the provisions set forth in paragraph (a) of Rule 4-B-1, that is, an agreement that permits a built-in paid 20 minute meal period as an exception to the 24-hour continuous operation provisions set forth in paragraph (e), the Board is impelled to find that no such agreement exists and therefore finds, in turn, that the language of paragraph (a) permits Carrier, without seeking or securing the agreement of the Division Chairman, to switch from a built-in paid 20 minute meal period to a 30 minute or 60 minute unpaid meal period.

Based on the foregoing findings, the Board rules to deny the subject claim in its entirety.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 13th day of August 1997.