

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32627
Docket No. MW-31052
98-3-93-3-28

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to designate a regular meal period, in accordance with Rule 32, for the employees assigned to various System Gangs beginning January, 1992 (System File R-70/920485).
- (2) As a consequence of the violation referred to in Part (1) hereof, the Carrier shall:
 - (1) Immediately determine what regular meal periods the Carrier wishes to establish for the existing gangs in line with the guidelines mentioned and explained herein;
 - (2) immediately issue a bulletin to clarify (and properly establish) the meal period lengths and starting times for each of the existing gangs;
 - (3) issue the necessary instructions to all concerned to ensure that all future bulletins include specific meal period information in line with the guidelines mentioned and explained herein; and

- (4) reissue the necessary instructions to all concerned to regulate the meal periods on all existing and future gangs in line with the guidelines mentioned and explained herein.”

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.

The Agreement effective January 1, 1973, provided in Rule 20, in relevant part, as follows:

“All new positions or vacancies that are to be filled (except as provided in Notes 1, 2, 3 and 4 below), including temporary vacancies of thirty (30) calendar days or more duration, created by the absence of the regular occupant of the position for such reasons as assigned to a temporary assignment, sickness, leave of absence, etc., shall be bulletined to all employees holding seniority on the district in the class in which the new position is created or vacancy occurs.

* * *

Bulletin will show location, descriptive title and rate of pay and will be prepared in the format set forth in Appendix I.

Note 1: None of the positions on system gangs will be bulletined.”

Appendix I required, among other things, that the bulletin specify the "hours of service." In addition, Rule 32 provides:

"(a) Where a meal period is allowed, it will be between the ending of the third hour and the beginning of the sixth hour after starting work. The regular meal period shall not be less than thirty (30) minutes nor more than one (1) hour.

(b) If the meal period is not afforded within the time limit specified in Section (a) and is worked, the meal period shall be paid for at the pro rata rate and twenty (20) minutes with pay in which to eat shall be afforded at the first opportunity.

(c) If the twenty (20) minute meal period as specified in Section (b) is not afforded within the regular hours of assignment, the meal period shall be paid for at the overtime rate."

In 1982, a dispute arose between the parties over Carrier's failure to specify a meal period in bulletins for vacancies on division gangs. The parties resolved this dispute by agreeing that future bulletins would specify the "normal meal period." Division gang bulletins have so specified ever since.

In 1988, the parties amended the Agreement to provide for bulletining of system gang vacancies. The amendment also provided for telephonic bulletining of all vacancies and contained a written outline of the bulletin which included a requirement that the bulletin specify, "hours of service."

System gang bulletins did not specify a normal meal period or a regular meal period. System gangs, however, worked through the time provided in Rule 32(a) for a regular meal period and were compensated in accordance with Rule 32(b). In late 1991 or early 1992, however, Carrier began requiring members of system gangs to observe meal periods in accordance with Rule 32(a) but continued not to specify a regular meal period in the bulletins. Such actions prompted the instant claim.

The Organization contends that the plain language of Rule 32 requires Carrier to designate a regular meal period, i.e. a meal period that the employee regularly observes. The Organization urges that Carrier agreed with this interpretation in 1982

when the same controversy arose concerning division gangs. The Organization maintains that the same Agreement language covers system gangs as well as division gangs and therefore the 1982 resolution must govern the instant dispute. In the Organization's view, when the parties amended the Agreement in 1988 to provide for bulletining of system gang vacancies, they intended to bulletin such positions in the same manner as division gang vacancies. The Organization cites several Third Division Awards in support of its position, and places particular reliance on Third Division Award 28344.

Carrier contends that the plain language of Rules 20 and 32 support its position. Carrier argues that Rule 20 is silent as to whether Carrier must designate a specific meal period and that Rule 32's only restrictions are that the meal period occur between the end of the third hour and start of the sixth hour of work. Carrier argues that its long-standing practice has been never to specify a meal period in system gang vacancy bulletins. Carrier urges that the 1982 resolution does not control the instant dispute because it applied only to division gangs and because it merely specified that the bulletin contain a "normal meal period," which continued to recognize Carrier's discretion. Since 1989, Carrier observes, it has been bulletining system gang vacancies and has not specified a meal period in the bulletins. Carrier further argues that the Awards on which the Organization relies are not controlling because those Awards relied on well-established practices on other properties that were very different from the practice on this property.

The starting point for our analysis is the language of Rule 20, as amended in December 1988, and Rule 32. Although each party contends that its position is supported by the Rules' plain meaning, we find that the relevant language of each Rule is ambiguous.

Rule 20 and its appendix and subsequent outline require that the bulletin specify a position's "hours of service." The term, "hours of service," is reasonably susceptible to an interpretation that refers only to the starting and ending time of the shift, but it also is reasonably susceptible to an interpretation that includes specification of a normal meal period.

Rule 32 speaks of a "regular meal period." The term "regular meal period" may reasonably be interpreted to distinguish the uncompensated meal period provided for

in Rule 32(a) from the paid meal period provided in Rule 32(b), or to refer to a specific meal period that the employee regularly observes.

In 1982, the parties agreed on what these terms mean. At that time system gang vacancies were not bulletined but division gang vacancies were. The parties agreed that division gang bulletins would specify the "normal meal period." The agreement, however, was made in light of the requirement that bulletins specify the hours of service and resolved a dispute over what "hours of service" meant. There is nothing to indicate that the agreement was a special agreement for division gangs. Because the same language applies now to system gangs, as well as division gangs, and no provision was made in December 1988 to exempt system gang bulletins from specifying the normal meal period, there is a strong presumption that the Agreement requires system gang bulletins to specify the normal meal period as well.

Against this presumption, Carrier puts forth a practice of not specifying normal meal periods for system gangs. Of course, prior to 1989, system gang vacancies were not bulletined. Therefore, any practice on which Carrier might rely would begin only in 1989. However, any practice between 1989 and 1992 of not specifying a normal meal period is of insufficient weight to overcome the presumption that the language of Rules 20 and 32 has the same meaning for division and system gangs because prior to 1992 system gangs had no regular meal period but, instead, were compensated in accordance with Rule 32(b). Accordingly, we conclude that Carrier is required to include a normal meal period in its bulletins of system gang vacancies.

We emphasize the narrowness of the issue presented to us and the narrowness of our holding. The only issue presented is what, if anything, Carrier is required to specify concerning meal periods in bulletins for system gang vacancies. We hold only that Carrier is required to handle system gang bulletins in the same way as it handles division gang bulletins with respect to meal periods.

Carrier contends that the specification of normal meal periods in division gang bulletins still affords it discretion in the day-to-day administration of the meal period. This contention is not before us. For example, we are not presented with a case where a bulletin specifies a normal meal period and the employees routinely observe that meal period except that Carrier occasionally requires them to observe a slightly different meal period. We indicate no opinion as to how such a situation must be handled.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 23rd day of June 1998.