

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32767
Docket No. CL-33701
98-3-97-3-163**

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

**(Transportation Communications International Union
(Allied Services Division)
PARTIES TO DISPUTE: (
(Illinois Central Railroad**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11708) that:

- 1. Carrier violated the Agreement at Memphis, Tennessee, beginning January 15, 1996, namely Rule 28, due to Position No. 1500-4 having an assigned meal period of thirty minutes.**
- 2. Carrier shall now compensate Clerk E. M. Mote, his successors and substitutes for thirty minutes' pay at the time and one-half rate of pay.**
- 3. Continuing claim dates and successor Claimants to be ascertained by joint check of payroll records.”**

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.

In November 1986, Carrier transferred and consolidated a number of positions into its Memphis Transportation Center, a 24-hour, around-the-clock operation. One position transferred, No. 1500-4, from Greenwood, Mississippi, was bulletined to work Monday through Saturday, 8:00 A.M. to 4:30 P.M., with a 30 minute meal period. During the next nine years Position No. 1500-4 was re-bulletined on several occasions, with slight variations, but always with a 30 minute assigned meal period.

On January 25, 1996 the Organization filed a claim contending that the assigned hours of Position No. 1500-4 were in violation of Rule 28(a) of its Agreement. Rule 28(a) provides:

"For regular operations requiring continuous hours, eight consecutive hours without meal period shall be assigned as constituting a day's work, in which case not less than twenty minutes shall be allowed in which to eat, without deduction in pay, between the ending of the fourth hour and the beginning of the seventh hour after starting work. Employees covered by this rule will not be held responsible for the performance of routine duties during lunch period."

The Organization argued that the Memphis Transportation Center was a continuous operation and, as such, all positions assigned in the Center needed to be worked eight consecutive hours with a paid 20 minute meal period.

Carrier defends against allowing the claim on two grounds. First, Carrier says that the claim is untimely. The date of occurrence was the date the position first worked after it was bulletined in the Memphis Transportation Center. If the Organization disputed a 30 minute unpaid lunch period it should have filed a claim within 60 days of that date. That it did not forecloses consideration of the claim at this late date. Second, Carrier says that Position No. 1500-4 is different from other positions assigned in the 24 hour cycle. As such, just because it works in the same facility does not mean that it should be bulletined with a paid lunch period.

Carrier is correct on both of its defenses. The triggering event involved in this claim was the establishment of the position in the Memphis Transportation Center with a 30 minute meal period. That event occurred in 1986. The Organization had 60 days

from that date to file a claim if it believed that Position No. 1500-4 should have had a 20 minute paid meal period. (See Third Division Award 26124.) That a timely claim was not filed within 60 days of the initial date Position No. 1500-4 was bulletined is fatal to the Organization's claim.

With regard to the merits, it should be noted that Position No. 1500-4 is not worked in a 24 hour cycle. It does not relieve another job, and it is not relieved by another job. It is a stand-alone position. The Board can find no provisions in the Agreement that proscribes Carrier from having stand-alone positions assigned within the same office as around-the-clock jobs. That a non-continuous operations position is situated in the same facility having continuous operations positions does not require that non-continuous operations positions be scheduled with a paid lunch period.

The Organization has not established that Position No. 1500-4 is a continuous operations position. The fact that it works in the same office as continuous operations positions does not, without more, make it a continuous operations position.

The claim is without merit.

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 23rd day of September 1998.