

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35478
Docket No. CL-35962
01-3-00-3-32

The Third Division consisted of the regular members and in addition Referee Andr e Y. McKissick when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12529) that:

Claim 1. The following claim is hereby submitted on behalf of Claimant Charles E. Fullerton:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-1 (e) and other Rules where applicable.
- (b) Violation occurred on the following dates: 4/1, 4/3, 4/6, 4/7, 4/11, 4/12, 4/13, 4/14, 4/15, 4/18, 4/19, 4/20, 4/21, 4/22, 4/24, 4/25, 4/27, 4/28, 4/29, 4/30, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 2. The following claim is hereby submitted on behalf of Claimant Charles E. Fullerton:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-1 (e) and other Rules where applicable.

- (b) Violation occurred on the following dates: 3/1, 3/2, 3/3, 3/9, 3/10, 3/11, 3/14, 3/15, 3/16, 3/17, 3/18, 3/19, 3/21, 3/22, 3/23, 3/24, 3/25, 3/28, 3/29, 3/30, 3/31, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 3. The following claim is hereby submitted on behalf of Claimant Charles E. Fullerton:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-1 (e) and other Rules where applicable.
- (b) Violation occurred on the following dates: 2/1, 2/2, 2/3, 2/6, 2/7, 2/9, 2/10, 2/11, 2/22, 2/23, 2/24, 2/25, 2/28, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 4. The following claim is hereby submitted on behalf of Claimant Charles E. Fullerton:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-1 (e) and other Rules where applicable.

- (b) Violation occurred on the following dates: 1/1, 1/3, 1/4, 1/5, 1/6, 1/10, 1/11, 1/12, 1/13, 1/14, 1/19, 1/20, 1/21, 1/24, 1/25, 1/26, 1/27, 1/28, 1/31, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 5. The following claim is hereby submitted on behalf of Claimant R. T. Gordon:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-I(e) and other Rules where applicable.
- (b) Violation occurred on the following dates January 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31, February 1, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, March 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 6. The following claim is hereby submitted on behalf of Claimant Fred Michael Irish:

- (a)** The Carrier violated the TCU Clerical Agreement Rule 4-B-1(e) and other Rules where applicable.
- (b)** Violation occurred on the following dates: March 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 20, 21, 22, 25, 26, 27, 28, 28, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c)** Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d)** Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 7. The following claim is hereby submitted on behalf of Claimant F. M. Irish:

- (a)** The Carrier violated the TCU Clerical Agreement Rule 4-B-1(e) and other Rules where applicable.
- (b)** Violation occurred on the following dates: February 1, 4, 5, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c)** Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d)** Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 8. The following claim is hereby submitted on behalf of Claimant F. M. Irish:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-1(e) and other Rules where applicable.**
- (b) Violation occurred on the following dates: January 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.**
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.**
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.**

Claim 9. The following claim is hereby submitted on behalf of Claimant David F. Coyle:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-1(e) and other Rules where applicable.**
- (b) Violation occurred on the following dates: December 27, 28, 29, 30, 31, January 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 25, 27, 28, February 2, 3, 8, 9, 10, 11, 14, 15, 16, 17, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.**
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.**
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.**

Claim 10. The following claim is hereby submitted on behalf of Claimant Normand Morin:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-I(e) and other Rules where applicable.
- (b) Violation occurred on the following dates: January 5, 6, 7, 8, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, February 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 24, 25, 26, 27, March 2, 3, 4, 5, 6, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 11. The following claim is hereby submitted on behalf of Claimant Normand Morin:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-I(e) and other Rules where applicable.
- (b) Violation occurred on the following dates: March 24, 25, 26, 27, 30, 31, April 1, 2, 3, 6, 7, 8, 9, 10, 13, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 12. The following claim is hereby submitted on behalf of Claimant David L. Burr:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-I(e) and other Rules where applicable.
- (b) Violation occurred on the following dates: March 7, 10, 11, 12, 13, 17, 18, 19, 20, 24, 25, 26, 27, 31, April 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 22, 23, 24, 25, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 13. The following claim is hereby submitted on behalf of Claimant Paul J. Sprinkle:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-I(e) and other Rules where applicable.
- (b) Violation occurred on the following dates: April 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 1998 and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 14. The following claim is hereby submitted on behalf of Claimant Paul J. Sprinkle:

- (a)** The Carrier violated the TCU Clerical Agreement Rule 4-B-l(e) and other Rules where applicable.
- (b)** Violation occurred on the following dates: March 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c)** Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d)** Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 15. The following claim is hereby submitted on behalf of Claimant Paul J. Sprinkle:

- (a)** The Carrier violated the TCU Clerical Agreement Rule 4-B-l(e) and other Rules where applicable.
- (b)** Violation occurred on the following dates: February 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c)** Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d)** Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.

Claim 16. The following claim is hereby submitted on behalf of Claimant Paul J. Sprinkle:

- (a) The Carrier violated the TCU Clerical Agreement Rule 4-B-1(e) and other Rules where applicable.
- (b) Violation occurred on the following dates: January 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 1998, and the Carrier has failed to compensate Claimant in accordance with the Agreement.
- (c) Claim is for 20 minutes pay at the appropriate rate in effect at the time of the violation of the Agreement. This is with regards to a Meal Period specified and in accordance with the above agreement rule.
- (d) Violation occurred because of the following reason(s) Carrier has failed to assign a meal period in accordance with the rule stated above and Claimant is entitled to compensation according to the above agreement rule.”

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.

At issue, is Rule 7-B-1, Claims for Compensation, which reads, in part, as follows:

"RULE 7-B-1, Claims for Compensation

- (2) When a claim for compensation alleged to be due is based on an occurrence during a period employee was out of active service due to sickness, vacation, leave of absence, suspension or reduction in force, it must be made, in writing, within sixty (60) calendar days from the date the employee resumes duty.

When claims or grievances have been presented in accordance with this Paragraph (a), including exceptions (1) and (2), and are denied, the Corporation shall, within sixty (60) days from the date same as filed, notify whoever filed the claim or grievance (the employee or his representative) in writing, of the reasons for such disallowance. If not so notified, the claim or grievance will be allowed as presented, but this shall no be considered as a precedent or waiver of the contentions of the Corporation as to other similar claims or grievances."

The Carrier contends that these claims are procedurally defective, as they are beyond the 60 calendar days required in the above Rule 7-B-1. Using the operative date of October 16, 1997, as the trigger date of the violation, the Carrier points out that December 16, 1997 would amount to 60 days. However, the Carrier argues that the first claim was not filed until February 28, 1998, well beyond the time limitation of 60 days. Based on all of the above, the Carrier asserts that there is no need for the Board to consider the merits of the claims.

The Organization rebuts the assertions of the Carrier by maintaining that all the claims were of a continuous nature and there is no single trigger date. The Organization then argues the merits of the claims, involving the violation of the long-standing 20 minutes paid meal period.

The Board finds that these claims must be denied for the following reasons. The record reveals that these claims are time-barred. Rule 7-B-1 requires claims be presented 60 calendar days from the date of the occurrence on which such claims are based (October 16, 1997 - trigger date of alleged violation). Thus, all of the claims should have been brought before December 16, 1997. The evidence reflects that the first claim was not submitted until February 28, 1998, far beyond the time limit of said Rule.

Accordingly, the Board finds that it is precluded to consider the merits of the claims, as the claims are procedurally barred from consideration.

AWARD

Claims 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 22nd day of May, 2001.