

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36592  
Docket No. MW-35702  
03-3-99-3-642**

**The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Maintenance of Way Employes**  
**(Union Pacific Railroad Company (former Missouri**  
**( Pacific Railroad Company)**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier required Messrs. H. Batiste, J. L. Zeno, E.C. Williams, D. L. Johnson, F. Gusman, Sr. and B. Etienne to work through their assigned meal periods on each workday beginning March 23 through May 22, 1998 and then failed and refused to compensate them as required by the Agreement (System File MW 98-164/1148509 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants shall now each be compensated twenty-two (22) hours' pay at their respective rates of pay."**

**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 Claimants were assigned to Southern District Tie Gang 9168 in the spring 1998. This was a highly mechanized 60-person production gang under the supervision of R. Eckerle. The Truck Operator positions on the gang were bulletined to work from 8:00 A.M. to 4:30 P.M. with a one-half hour meal period. However, on April 20, 1998, the gang began working four ten-hour days each workweek.

Under Rule 19(a) when a meal period is allowed, it will be between the end of the fourth hour and the beginning of the seventh hour after starting work. If the meal period is not afforded within this time frame it shall be paid for and the employee will be allowed 20 minutes in which to eat at the first opportunity with no deduction in pay.

Pursuant to Rule 19(b) for regular operations requiring continuous hours, employees may be assigned a workday consisting of eight consecutive hours without a meal period. Such employees on regular operations requiring continuous hours shall be given 20 minutes in which to eat without a deduction in pay when the nature of the work permits such a break.

On June 18, 1998, the Organization presented a claim on behalf of six members of Southern District Tie Gang 9168 for the 44 work days between March 23 and May 22, 1998. It is the Organization's contention that on each of these workdays the six Claimants were required to work through their meal periods and were not compensated in accordance with Rule 19(a). The Organization requested that they be compensated 22 hours each at their respective straight time rates.

The Carrier denied the claim contending that, according to Supervisor Eckerle, all 60 members of Southern District Tie Gang 9168 were afforded time to eat lunch. The Carrier also averred that any claims for workdays before April 29, 1998, were barred by the 60 day time limit in which claims must be presented.

The 60-member, highly mechanized, production gang to which the six Claimants were assigned in the spring 1998 was the type of continuous operation contemplated by Rule 19(b) in the Board's opinion. Therefore, the gang members could be required to work eight consecutive hours without a meal period provided they were allowed 20 minutes in which to eat without a deduction in pay when the nature of the work permitted.

The Claimants did not assert that they were not allowed 20 minutes in which to eat on the workdays between March 23 and May 22, 1998. Indeed, when the claim was discussed on the property the General Chairman acknowledged that the Claimants worked eight hours and then were given 20 minutes in which to eat.

Although the six Claimants were given 20 minutes in which to eat after working eight hours each workday involved in this dispute they contend they also should have been compensated for their one-half hour meal period. They were not entitled to such compensation, in the Board's opinion.

As noted above, Southern District Tie Gang 9168 was involved in a regular operation requiring continuous hours. Therefore, pursuant to the explicit terms of Rule 19(b) members of this production gang could be required to work eight consecutive hours without a meal period provided they were allowed 20 minutes in which to eat without deduction in pay when time permitted. There is no requirement in Rule 19(b) that employees who are allowed 20 minutes in which to eat are also entitled to be compensated for a missed meal period. The six Claimants were not entitled to one-half hours' pay for each workday between March 23 and May 22, 1998, and the claim must be denied as a result.

### 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 16th day of June 2003.