

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39276
Docket No. MW-38291
08-3-NRAB-00003-040169
(04-3-169)

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it did not allow a regular meal period for the employes on Gang 9001 and when it did not compensate said employes for working their meal period beginning January 12, 2003 and continuing (System File J-0332-52/1361183).**
- (2) As a consequence of the violation referred to in Part (1) above, ‘The Carrier must compensate each employe assigned to Gang 9001 one-half (1/2) hour per day at the pro rata rate beginning on January 12, 2003. This claim is continuous for any and all future days when the regular meal period is not 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.

According to the Organization, the Carrier did not provide members of System Gang 9001 "a regular meal period" and further did not compensate those employees as a result of not providing a regular meal period. According to the Organization's Submission to the Board, the Carrier is obligated to "... designate a regular (fixed) meal period for the members of System Gang 9001. ..."

Rule 32 – MEAL PERIODS 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 will not be less than thirty (30) minutes or more than one (1) hour."

Bulletin No. GNSL13484 for System Gang 9001 states:

"ASSIGNED HOURS: 0700A-0330P LUNCH NORMALLY 4HRS AFTER START."

In Third Division Award 32627 between the parties, the Board addressed a claim by the Organization that "[t]he 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. . . ." In that case, the Board made a narrow holding:

"... [W]e 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.”

In Third Division Award 37368 (again between the parties and issued after Third Division Award 32627 as well as after the filing of this claim) the Board considered Third Division Award 32627 and addressed a claim concerning the Carrier’s use of the words “lunch normally 1130-12” contained in a bulletin for a system gang and held:

“ . . . [W]e agree with the Carrier that the phrase ‘lunch normally’ did not confer upon the Claimants an absolute right to an “assigned meal period of 30 minutes at the end of the fourth hour after starting work for the duration of Gang 9013’s existence, as the Organization would have it. The meal period information contained in the bulletin, although it did furnish a time, was only a guideline based on service requirements. . . .

. . . [W]e conclude that ‘lunch normally’ did not create a hard and fast time for the meal period, and did not trump the specific negotiated language of Rule 32(a) that accorded the Carrier flexibility in scheduling meal periods. . . .”

Here, the phrase “lunch normally 4hrs after start” used by the Carrier in Bulletin No. GNSL13484 for System Gang 9001 is really no different than “lunch normally 1130-12” discussed in Third Division Award 37368. “Lunch normally” does not mean that all members of System Gang 9001 must always stop working and eat lunch at the same designated time - i.e., precisely four hours after they start. As found in Third Division Award 37368, that phrase “. . . did not create a hard and fast time for the meal period. . . .” Indeed, had that been the intent, the bulletined language would have stated “lunch 4hrs after start.” Similarly, and in any event, Rule 32(a) only provides for a window for lunch to be taken and not for a specific time as urged by the Organization. On that basis, the claim shall be denied.

Form 1
Page 4

Award No. 39276
Docket No. MW-38291
08-3-NRAB-00003-040169
(04-3-169)

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 21st day of July 2008.