

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42477  
Docket No. MW-42157  
16-3-NRAB-00003-130103**

The Third Division consisted of the regular members and in addition Referee Sinclair Kossoff when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employes Division -  
( IBT Rail Conference  
(  
(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 failed to allow Mr. L. Lacey a meal period on September 17, 2011 (System File JE2011-10/1561332 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Lacey shall now be compensated for thirty (30) minutes at his respective time and one-half rate 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.

By letter dated September 26, 2011, the Organization filed a claim with the Carrier alleging that “Supervisor Mr. Doug Sharp, did not call or permit the curb Gang #9112 or me the foremen [sic] on this gang of rail south the right to have lunch and

refused to pay what I am entitled to under the agreement made between Union Pacific Railroad and the Union ALLIED FEDERATION.” The Organization requested “that Mr. Lacey be allowed the exact amount of monetary loss suffered on September 17, 2011,” which it stated was one-half hour’s pay at the overtime rate.

The September 26, 2011, letter provided the following alleged details regarding the claim:

“The work was being done at Dryden, Texas on the Sanderson Subdivision M.P. 479 to M.P. 433. Under the Form B #73330 we traveled to MP. 479.40 to 479.63 and worked this curb of 1268 ft under the direction of Supervisor Doug Sharp, to complete this curb 100%. When told [sic] about lunch the claimant was told to perform the work of his craft.”

The letter stated, “It is the organization[']s position that the carrier did not allow the opportunity for lunch only the time to perform work duties. This is wrong!”

The Carrier, by an Engineering Supervisor, answered the claim in a letter dated November 17, 2011. The reference heading on the letter listed two claims for the same Claimant, Mr. Lacey, for the same date, September 17, 2011, with two different UP claim numbers. The first point raised by the Carrier was that “the Carrier believes this may be a duplicate claim.” The Carrier next asserted that as Foreman of the gang Mr. Lacey was responsible under Union Pacific Rule 41.1 to supervise and engage in all work performed by their gang. This included, the Carrier stated, the responsibility to control “when himself as well as his peers observe their meal periods and not simply just rely on a ‘call’ from Supervisor Doug Sharp for him to do.”

The Carrier further argued that “[i]t is not the responsibility of the Supervisors and Managers to personally speak to each and every employee and tell them when to take their lunch break.” Because of the size of the group, 27 employees, the letter continued, and the scope and nature of their work, “it is communicated to the employees as a whole that even if they are not personally instructed as to an exact time and place at which they are to take their meal period, they are still given permission and authority to take their meal period when practicable.”

The Carrier’s Engineering Supervisor continued that he “has six (6) years of experience in working on large system gangs and hereby testifies that it is not traditional practice, for any employee, to work their entire shift without being afforded a meal period simply because they had not been ‘instructed’ to take lunch.” The letter insisted that “[a]ll employees, including Mr. Ellis, are allowed and encouraged to take a

meal period in accordance with Rule 35 of the Agreement.” The Engineering Supervisor stated that he “is also a qualified Foreman and cannot recall one instance in six (6) years where a Track Supervisor ever denied him of a meal period.” He declared that “[a]ll employees, including the gang Foreman, are allowed and encouraged to take a meal period in accordance with Rule 35 of the Agreement” and that “[i]f an employee fails to take a meal period because of his own poor time management it does not constitute a rule violation on the part of the Carrier.” The Carrier enclosed the following written statement dated 11/16/2011 by Track Supervisor Douglas V. Sharp which he sent to the Engineering Supervisor:

“Mitchell, In reference to the previous time calls on Gang 9112 Mr. Lacey was the foreman on the gang and it was his responsibility to call lunch for the gang. And there is no other claims from the rest of the 27 other employees on this gang except Mr. Ellis which is putting the claims in for himself and Mr. Lacey. It is an understanding on my gang that if an employee is not awarded his lunch to present this to me the next day so I can take [note] of this and I also don’t mind paying the overtime if this does happen. But everyone on the gang takes there [sic] lunch. These employees are claiming this form [sic] two months ago without any acknowledgement to myself or anyone else on this gang. FYI Mr. Lacey was also disqualified off gang 9112 on Sept. 20 for other gang related issues.”

The Carrier denied the claim.

By letter dated January 13, 2012, the Organization appealed the denial. The Organization noted the Carrier’s reliance on its own Rule 1.1 in justification of its denial of the claim and called this “outrageous.” With regard to the Carrier’s argument that Mr. Lacey, as Foreman of the gang, had the responsibility to call lunch for the gang, the Organization asserted, “If Mr. Lacey would have call[ed] lunch break he would have been disciplined.” Enclosed with the Organization’s appeal was a Statement for Claims Document consisting of a six-question questionnaire filled out by one employee (not Mr. Lacey). The employee answered “No” to the question whether he had lunch every day; “No” to the question of whether he was always paid for his lunch; “Yes” to the question if his supervisor ever told him that he will not pay for lunch; “No” to the question if the employee knew “what the CPI process is”; and “No” to the question of whether the “CPI” process is in place every day. That employee was neither Mr. Ellis nor Mr. Lacey.

The Carrier replied to the appeal by letter dated February 27, 2012, which, in its heading, referenced 13 separate claims filed in behalf of Mr. Lacey with claim dates

between September 1, 2011, and September 24, 2011. It first repeated the arguments made by the Engineering Supervisor in his letter of November 17, 2011. It then argued that Claimant was the Foreman of the gang with the responsibility to ensure that not only he but the entire work group he was supervising observed their meal period in the time frame given in Rule 35 of the Agreement. Third, the Carrier contended, the Organization failed to provide documentation or other evidence that the Claimant was denied a meal period on the specific dates alleged. Citing the statement by Track Supervisor Sharp, which spoke of an understanding on his gang that employees not awarded their lunch were to present the matter to him the next day, the Carrier asserted that the Organization “has also failed to show that the Claimant ever talked with Supervisor Sharp regarding a missed meal period and/or was denied payment for the same.” The Carrier then pointed to the fact that there were 27 employees on the gang “and only the Claimant and Foreman Lacey had claims filed by the Claimant regarding a missing meal period.”

The Carrier then addressed the questionnaire that was included with the Organization’s appeal. The Carrier asserted that the questionnaire did not provide evidence of a violation and that it was “vague and contains no dates.” The Carrier asked why, if that employee had been denied meal periods as alleged in the questionnaire, no claim was filed on his behalf. The Carrier argued that the questionnaire was “unpersuasive in proving the Organization position.” The Carrier contended that the contradictory positions of the parties created a dispute of facts which required dismissal of the claim because of the failure of the moving party to meet its burden of proof.

The claim letter of September 26, 2016, alleges that on September 17, 2011, a work group of which Claimant was Foreman was assigned to complete a curve of 1268 feet at certain mileposts in Dryden, Texas, on the Sanderson subdivision under the direction of Supervisor Doug Sharp and that “[w]hen told about lunch the claimant was told to perform the work of his craft.” Read grammatically the allegation in the claim letter is a non sequitur. It seems to be saying that when the Claimant was told about lunch, the Claimant was told to perform the work of his craft. The Board will therefore read the allegation to mean that when the Claimant inquired about lunch of a Manager, he was told to perform the work of his craft. Rule 35 (a) of the applicable Agreement provides that “[w]hen a meal period is allowed, it will be between the ending of the fourth hour and the beginning of the seventh hour after starting work, unless otherwise agreed upon by the employees affected and the local supervisory officers.” The claim letter does not state what time Claimant asked about lunch. So far as appears from the letter, when he asked about lunch and was told to perform the work of his craft, there was sufficient time to finish that phase of the work and still have lunch.

It is not disputed in the record that as Foreman of his gang, Claimant had the authority to designate when he and the other members of his gang were to take lunch. The fact that, according to the claim letter, at an undisclosed time an unnamed person told Claimant that he could not take lunch at that particular time is not persuasive evidence that Claimant would have been overruled if, at some other time during the designated time for a meal period under Rule 35, he would have called a lunch break for the gang including himself. Nor would such an initial alleged rejection have relieved Claimant of his responsibility as Foreman of his gang to apply his best efforts to assure that his gang obtained the meal period to which they were entitled under Rule 35. There is no evidence that Claimant again attempted to schedule a meal period after the alleged original rebuff. The assertion by the Organization in its appeal that he would have been disciplined for doing so is speculation. The claim will be denied.

**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 28th day of November 2016.