

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43322
Docket No. MW-44465
19-3-NRAB-00003-170589**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(Kansas City Southern Railway Company (former
(former Gateway Western Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly comply with Rule 7 and provide Mr. A. McGee with a proper meal period after he worked more than ten (10) hours a day on October 2, 4, 5, 9, 18, 19, 23, 29, 30, 31 and November 7, 12, 13, 14 and 21, 2015 (System File C 15 10 02/K0415-6522 GAT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. McGee shall now ‘... be compensated a total of twenty-five (25) hours at the time and one-half rate of pay which totals \$941.63 for the Claimant plus late payment penalties based on a daily periodic rate of .0271% (Annual Percentage Rate of 9.9%) calculated by multiplying the balance of the claim by the daily periodic rate and then by the corresponding number of days over sixty (60) that this claim remains unpaid.’ (Emphasis in original).”**

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 Claimant is a bridge tender assigned to Gang 650 headquartered in Louisiana, Missouri with duties of operating, inspecting and repairing the Carrier's river bridges. The Claimant has a bulletined assignment of five, eight-hour days.

On various dates in October and November 2015, the Claimant was required to work past his assigned shift on overtime causing him to work from 10 to 16 hour days, for which he was compensated at the overtime rate for work performed in excess of his assigned eight hour shift.

Claim was filed on the Claimant's behalf seeking compensation because the Claimant "... worked over ten consecutive hours without being provided a substantial hot meal provided by the Carrier, allowed time to take mentioned meal period, or compensated one hour at the time and one half rate per meal period, as was the practice before the date of this claim."

The relevant rule provides:

"RULE 7
MEAL PERIOD

- (a) Unless otherwise agreed to by the proper officer and duly accredited representative, the assigned meal period shall not be less than thirty (30) minutes nor more than one (1) hour.
- (b) If an employee is assigned to a shift consisting of eight (8) consecutive hours or more, then not less than twenty (20) minutes shall be allowed in which to eat, without deduction in pay, during the fourth or fifth hour after the beginning of the job assignment.

- (c) When a meal period is allowed as provided in (a), above, it shall be regularly assigned during the fourth or fifth hour after the beginning of the job assignment, unless otherwise agreed to between Management and the duly accredited representative. If the meal period provided for in (a) or (b) above, is not afforded within the assigned period and is worked, the meal period shall be paid for at the overtime rate and twenty (20) minutes with pay in which to eat shall be afforded at the first opportunity.
- (d) Employees will not be required to work more than ten (10) hours without being permitted to take a second meal period, and succeeding meal periods will be granted at appropriate intervals of not more than six (6) hours. Time taken for such meal periods will not terminate the continuous service period and will be paid for up to thirty (30) minutes for each such meal period.
- (e) The second meal and subsequent meals (if any) under Section (d) shall be furnished by the Carrier, at Carrier expense. The Carrier will make a reasonable effort to insure that such meal will be hot and substantial.
- (f) The Carrier will make suitable arrangements for employees to take additional and succeeding meals for which allowance is made pursuant to Section (d) and (e) above, or for meals on rest days and holidays, when the work extends beyond the time of which the employee has been given notice prior to reporting to work.”

This is a similar dispute resolved by the Board in Third Division Award 43319. For reasons fully discussed in that award, we do not find that the Carrier violated Rule 7(d) because it has not been shown that the Claimant was prevented – either by work requirements or by direction from supervision – from taking a meal period during any of the overtime periods on the days he worked past his assigned shift and the Claimant was free to take a paid meal period during the overtime assignments worked by him.

Further, as in Third Division Award 43319, we find that the Claimant should be compensated for the costs of meals not furnished by the Carrier during overtime

periods covered by this claim as required by Rule 7(e). The procedure set forth in Third Division Award 43319 for determining that amount shall also be followed in this case.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 14th day of December 2018.