

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44096
Docket No. MW-42789
20-3-NRAB-00003-190349**

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

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

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier required Assistant Foreman M. Tiglio to work through his regularly assigned meal period on May 23, 2013 through May 30, 2013 and on June 8, 2013 through June 13, 2013 and when it failed to afford him twenty (20) minutes with pay in which to eat at the first opportunity on said days (System File T-1335U-702/1589124).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Tiglio shall now “*** be allowed no less than eight (8) hours of compensation at his respective overtime 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.

Claimant M. Tiglio was assigned to Gang 8582 as an Assistant Foreman and was regularly assigned and working as such at the time of this dispute. This claim is based on the proper application of Rule 32 of the collective bargaining agreement which, in pertinent part, provides:

“RULE 32 - MEAL PERIODS

- (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.
- (b) If the meal period is not afforded within the time limit specified in Section (a) and is worked, the meal period will be paid for at the pro rata rate and twenty (20) minutes with pay in which to eat will be afforded at the first opportunity.
- (c) If the twenty (20) minute meal period as specified in Section (b) is not afforded within the regular hours of assignment, the meal period will be paid for at the overtime rate.
- (d) When the starting time of employees is changed in accordance with the provisions of Rule 31 a corresponding change will be made in the regular assigned meal period.”

Beginning on May 23, 2013 through May 30, 2013 and then again on June 8, 2013 through June 13, 2013, the Claimant worked through his meal breaks.

The Organization filed a timely claim on behalf the Claimant alleging that he was denied his lunch period. The claim was properly handled by the Organization at all stages of the appeal up to and including the Carrier’s highest appellate officer. The matter was not resolved and is now before this Board for resolution.

The Carrier maintains that the Claimant was not denied his lunch period. In addition, the Claimant’s failure to take his lunch period was his decision and not due to any action by the Carrier. As a result, it is argued, the Organization failed to meet its burden of proof and at best, this was a “dispute in facts.”

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization has not met its burden.

At issue is whether the Claimant was denied his lunch break or failed to take it. According to Manager Todd Stotts, the Claimant was not denied his lunch break. Stotts explained that

"As a work group we designate a shutdown time each day where our employees can take their lunches without fail. At that time all individuals check out of the form b so they can take their 30 [minutes]. There would not be a situation where a sub group coordinator would need to stay checked in to (sic) the form b to monitor the radio when his group is checked out and taking lunch.¹"

By contrast, the Claimant provided a statement as follows:

"I was working on both Mike Weekly and Randy Ruiz's gangs. Our time keeper, Pedro Huerta Jr., and Randy were standing around talking and I went up to them and asked "do we get paid through lunch since we don't check out of the form B?" The answer I got was "no, you don't get paid" so I asked, "can I check out then?" Randy replied, "no, that's not the way we do things around here." I was calling through trains every lunch and never got a uninterrupted lunch. Cause that's how they did things there.²"

There is insufficient evidence that the Carrier denied the Claimant's lunch period during the time frames at issue. The record is devoid of any statements or testimony to support the Claimant's account of the events. Thus, there is a dispute in facts that cannot be reconciled by the Board. Where such a dispute exists, the claim must be denied. Third Division Award 30591 and 33951.

¹ Carrier Exhibit B2.

² Carrier's Exhibit B6.

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 11th day of August 2020.