

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 44114  
Docket No. MW-44904  
20-3-NRAB-00003-180340

The Third Division consisted of the regular members and in addition Referee I.B. Helburn when award was rendered.

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

**PARTIES TO DISPUTE:** (

(Kansas City Southern Railway Company  
(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 provide Mr. C. Laux with a proper meal period or compensation after he worked more than ten (10) hours a day on August 23 through 26, 2016 and September 6, 7 and 15, 2016 [System File 16 08 23 (059/K0416-6943 GAT)].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Laux shall now ‘... be compensated a total of nine (9) hours at the time and one-half rate of pay which totals \$1355.94 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 alleged violation resulted in a timely filed and properly processed claim that remained unresolved on the property and, therefore, was progressed to this Board for final adjudication.

The Organization avers that on the above-noted days in August and September 2016 the Claimant worked either twelve (12) or sixteen (16) hours with the Carrier failing to provide a hot meal, time to eat the meal or compensation for the meal period. The Organization has established a violation of Rule 7(b), 7(d), 7(e) and 7(f). The Carrier has not disputed the days and hours worked by the Claimant or that the Claimant did not receive a proper meal on these days; therefore, the Board must accept these facts. Statements provide conclusive proof that until recently the Carrier has complied with Rule 7 as the Organization understands the rule. The Carrier has presented no valid defense for the violation. Because of the frequent references to Rule 7 in the original claim, the reference to Rule 17, a typographical error, does not invalidate the claim. The Carrier's reliance on Rule 7(c) is misplaced. The Claimant was not obligated to provide his own meals; rather, Rule 7(e) obligates the Carrier to provide a hot and substantial meal. Logistical issues do not eliminate the obligation to provide a meal. The claim does not ask for overtime pyramiding, but only for pay for the deprived meal period.

The Carrier notes that the initial claim referenced Rule 17, which was not the claim handled on the property. The procedural error should cause the Board to dismiss the claim for lack of jurisdiction. Regarding the merits, the Organization has failed to satisfy its burden of proof because none of the language in Rule 7 supports the claim. The Claimant was paid continuously. Rule 7(e) does not mandate a penalty for not providing a hot meal. The Carrier is not contractually compelled to bring a hot meal to the Claimant, who was not deprived of the opportunity eat an assigned meal. It was impossible for the Carrier to bring a meal to the Claimant, a Bridge Tender who worked

in remote sites where the bridges are located. No issues were raised about eating a meal within the initial eight (8) hours of work. Train traffic and the timing of likely call-outs are known. The Organization has not shown that meals were not provided or that the Claimant contacted the Carrier to provide meals. Mere assertions do not make a *prima facie* case. Moreover, Carrier records show that on August 24, 2016 there was a break between the Claimant's eight (8) hour shift and the additional four (4) hours that he worked and that on August 25, 2016 the Claimant worked eight (8) hours straight time and no overtime.

The contract language below has particular relevance to this dispute.

**"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 ensure 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.”

Turning to the parties’ contentions, in its ex-parte submission, the Carrier asserts that this Board should dismiss the claim for lack of jurisdiction because in its initial claim the Organization referenced Rule 17 Meal Period, but in the Notice to the NRAB the Organization referenced Rule 7 Meal Period. The Organization did, indeed, begin with an allegation that the Carrier violated Rule 17, but the letter to the Carrier went on to list the various meal periods for which the Claimant should be compensated and thereafter set forth the relevant sections of Rule 7 Meal Period, labeled as such. The Carrier’s declination noted the discrepancy but responded to the allegation that Rule 7 had been violated. After the declination was received, the Organization submitted a further appeal in which they acknowledged the “harmless typographical error” and again focused on the alleged violation of Rule 7 Meal Period. Rule 17 was said by the Carrier to concern “Bulletin, but none of the Parties’ contentions have addressed issues relating to Bulletin.

A review of the on-property correspondence establishes conclusively that the typographical error was, indeed, harmless and neither mislead nor prejudiced the Carrier’s effort to defend against the allegation. The case considered on the property is exactly the case now before this Board; therefore, there is no basis whatsoever for this Board to dismiss for lack of jurisdiction.

The Claimant, with established seniority in the Maintenance of Way and Structures Department, was working as a relief Bridge Tender on Gang 655 and headquartered in Pearl, IL at times relevant. He was subject to call-outs. The Board in

Third Division Award 43319 involving the same parties found that the language of Rule 7(f) requires the Carrier to “make suitable arrangements for employees to take additional and succeeding meals” when contractually required and, per Rule 7(e), to “make a reasonable effort to ensure that such meal will be hot and substantial.” The current Board observes, however, that providing a hot and substantial meal does not mean that the Carrier is obligated to cater a meal to a remote location when requested to do so by the Bridge Tender. Purchase of a hot, substantial, reimbursable meal by a Bridge Tender on the way on the way to a duty assignment and the placement of the meal in an insulated container designed to retain heat or a microwave oven in the Bridge Tender’s operating space at the bridge might be reasonable ways to comply with the negotiated agreement.

In the aforementioned Award 43319, the Board found no evidence showing that the Claimant was prevented from taking a meal, was refused a meal period, was not paid for all hours worked, including overtime hours, or was so busy with the actual bridge tending duties that it was impossible to find time for a meal period. These facts pertain equally to the claim before the current Board. Further consideration of the facts attendant to the instant claim compel that the claim be only partially sustained. Carrier payroll data show that the Claimant worked twelve (12) continuous hours on August 23, 2016 and was, therefore, due a meal that was not received. Payroll data show that the following day, he worked eight (8) hours with four (4) additional hours coming when called out after a break. He was not due a meal, nor was he due a meal on August 25, 2016 when he worked only eight (8) hours according to payroll data. On August 26, 2016 the Claimant worked twelve (12) continuous hours and was due but did not receive a meal. On September 6, 2016 the Claimant worked sixteen (16) continuous hours. The first meal coming but not provided would have been after he worked more than ten (10) hours according to Rule 7(d). That Rule further states that “succeeding meal period will be granted at approximate intervals of not more than six (6) hours. The second meal would have been contractually mandated had the claimant worked past sixteen (16) continuous hours, but payroll data show that he did not. He was due one meal. This explanation also applies to the sixteen (16) continuous hours worked the following day. Finally, on September 15, 2016, Mr. Laux worked twelve (12) continuous hours and was not provided the meal he should have received. This claim is sustained to the extent noted above. In Award 43319 the Board found evidence that meals that could have been taken were not furnished by the Carrier and, that the “Claimant shall therefore be entitled to compensation for reasonable meal costs on those claim dates that the claimant worked overtime qualifying him for such meals under Rules 7(d) and (e).”

Like the previous Board, we remand the matter to the parties to agree on what the reasonable meal costs ought to be. We retain jurisdiction in the event the parties are unable to agree on reasonable meal costs.

**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 11<sup>th</sup> day of August 2020.