

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44117
Docket No. MW-44953
20-3-NRAB-00003-180366**

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 October 1, 8, 15 and 22, 2016 [System File C 16 10 01 (070)/K0416-6992 GAT].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Laux shall now ‘... be compensated a total of eight (8) hours at the time and one-half rate of pay which totals \$301.32 for the Claimant plus late payment penalties based on a daily periodic rate of .02715 (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 dispute identified in the aforementioned claim was the subject of a timely-filed claim that was properly processed on the property and when not resolved was progressed to this Board for final adjudication.

The Claim established seniority in the Maintenance of Way and Structures Department and was working as a Bridge Tender on Gang 650 headquartered in Louisiana, MO. The Organization contends that Claimant Laux worked sixteen (16) hours on each of the above-noted days and was not provided hot meals, time to eat the meals or compensation for the missed meal periods. The Carrier has not disputed the Organization's assertions of time worked. Attached statements show a past practice in accordance with the Organization's understanding of Rule 7. Furthermore, the Carrier has not provided a valid defense. While, due to a typographical error, the initial claim wrongfully referred to Rule 17, the claim letter and the quoted Agreement provision later in the letter establish Rule 7 as the relevant Rule. Carrier reference to Rule 7(c) is erroneous because that rule refers to a meal taken during a normal work period rather than meals taken after a ten (10) hour work period. The Carrier's assertion that the Claimant could have procured his own hot meal and expensed it is "preposterous" because Rule 7(e) obligated the Carrier to provide the meal. The Rule does not excuse the Carrier from the obligation to provide the meal because of logistical issues. The claim for second and third meals did not involve pyramiding because the claim was not for a double payment.

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, the Carrier does not understand why the claim was filed because records show that the Claimant worked only an eight (8) hour day on each of the days in question.

The contract language below has particular relevance to this dispute.

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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 unambiguously 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.

There is no need for the Board to analyze in any depth the requirements of Rule 7. Carrier payroll data show that on each of the four dates listed in the claim, the Claimant worked and was paid for only eight (8) hours. He was not due a second meal; there was no violation.

AWARD

Claim denied.

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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.