

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44593  
Docket No. MW-44801  
22-3-NRAB-00003-180254**

**The Third Division consisted of the regular members and in addition Referee James M. Darby when award was rendered.**

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

**PARTIES TO DISPUTE: (  
(BNSF Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier recouped overtime payments from Messrs. P. Mitchell and A. Nelson by cut letters issued in August 2016 (System File 2413-SL32-1611/14-17-0036 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants P. Mitchell and A. Nelson shall be compensated the amount improperly recouped from them as specified within their respective cut letters issued in August 2016.”**

**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.**

On June 28, 2016, the Claimants were required to perform overtime service after and continuous with their regular assigned schedule. The Claimants were assigned and working a derailment when they realized they were about to exceed their continuous hours of service without the designated meal period. The record shows that the Claimants contacted their supervisor who instructed them to keep working and a meal would be provided. Thereafter, a meal was provided at 9:30 P.M., which was three (3) hours after the Claimants' designated time for a subsequent meal period set forth in Rule 32(e).

Rule 32(e) of the parties' Agreement sets forth the provisions governing subsequent meal periods.

#### **RULE 32 - MEAL PERIOD**

\* \* \*

**32(e) Subsequent Meal Periods.** Employees required to render overtime service shall be accorded meal periods corresponding as nearly as possible to their normal meal periods, with no more than six (6) hours of continuous service between meal periods, except where employees are returned to their assembly point within three (3) hours after the regularly assigned quitting time.

For the subsequent meal period(s), the Company will furnish meals at no cost to the employees or reimburse said employees for the reasonable cost thereof, provided, however, if any employee is called for overtime work at least one and one-half hours in advance of the time required to report, it shall be the employee's responsibility to carry a lunch or provide the first meal at no cost to the Company. In the event a subsequent meal period is not afforded within the designated time, and they are working at time and one-half, the employees will be paid an additional one and one-half hours pay for each hour of service from that time until such time as they are accorded a meal period or until released. In the event they are working at the double time rate, the employees will be paid an additional one hour's pay at the pro rata rate for each hour of service from that time "until such time as they are accorded a meal period or until released; there shall, however, be no compounding of penalty payments.

**There shall be no deduction in pay or termination of continuous service for a reasonable period of time for a meal period granted under this Rule 32 –(e).**

**Consequently, the Claimants were paid an additional one and one-half (1.5) hours' pay for each hour of service until they were accorded a meal period, as required by the Agreement. Thereafter, on August 12, 2016, the Carrier sent cut letters to the Claimants and on August 27, 2016, recollected such overtime monies.**

**During the claims handling process the Carrier represented (and the Organization later acknowledged in its September 1, 2017, confirmation of conference letter) that a food truck was on site the entirety of the Claimant's overtime shift and all involved employees were offered a meal at no cost. The Claimants were the only employees working the overtime shift who claimed that a subsequent meal period was not afforded. It was these circumstances that led to the Carrier recouping the overtime monies from the Claimants. The Organization has failed to rebut these latter facts establishing that Claimants were afforded a subsequent meal at no cost within the time limits set forth within Rule 32(e).**

**Accordingly, for all these reasons the claim is 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 29<sup>th</sup> day of October 2021.**