

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44595
Docket No. MW-45320
22-3-NRAB-00003-180314**

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 failed to provide Messrs. D. Maddox, M. Loomis, D. Browning, J. Thayer, A. Rutschman, S. Valentine, G. Johnson, M. Morrow, T. Pryor, B. May, R. Perschbacher and J. Walker with a subsequent meal period during the work period on October 4 and 5, 2016 and when the Carrier failed to compensate said employees at the appropriate overtime rate of pay therefore (System File 2405-SL32-1614/14-17-0058 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Maddox, M. Loomis, D. Browning, J. Thayer, A. Rutschman, S. Valentine, G. Johnson, M. Morrow, T. Pryor, B. May, R. Perschbacher and J. Walker shall now be compensated for four and one-half (4.5) hours at the applicable 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.

The record shows Claimants have established and hold seniority in the Carrier's Maintenance of Way and Structures Department and were assigned and working on the Emporia Subdivision of the Kansas District 700. On October 4 and 5, 2016, the Claimants were required to perform overtime service at Bridge MP 224.5. on the Emporia Subdivision of Kansas District 700. The Organization contends the Carrier violated the Agreement when it failed to provide a subsequent meal period and meal to the Claimants when they were assigned to work for more than six (6) hours of continuous service between meal periods. Moreover, it also contends the Carrier failed to properly compensate the Claimants when it did not afford them with a subsequent meal period and meal.

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).

In support of this claim the Organization presented four hand-written, signed, and dated witness statements each expressly representing that they received no additional or subsequent meals during their overtime shifts. In response, the Carrier submits an email from Manager G. Thompson stating that food was provided “throughout the day/night during this project,” based on his being informed of such by Supervisor Gibson. The Board concludes that under the specific facts of this case, the Carrier’s response is more akin to a general assertion, rather than probative, first-hand evidentiary proof. Under these circumstances, we find the Carrier has failed to satisfactorily establish its affirmative defense that the Claimants were provided a meal.

Accordingly, for all these reasons the claim is sustained.

AWARD

Claim sustained.

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 29th day of October 2021.