

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44634  
Docket No. MW-44204  
22-3-NRAB-00003-210222**

**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: (**

**(BNSF Railway Company (Former Burlington Northern  
(Railroad)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier failed and refused to provide the members of Regional System Gang TTPX 0013 a second meal period as required by the Agreement beginning on August 10, 2015 and continuing (System File T-D-4785-M/11-16-0042 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Lee, C. Olson, E. Grossell, J. Wilken, G. Spring, C. Miller, M. Bradley, S. Clemmer, M. Paul and K. Hill shall each ‘... receive two (2) hours and forty (40) minutes on each claimed dates (sic) at their overtime rate of pay. In addition, the cost of a meal that should have been provided by the carrier.’”**

**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 above-named Claimants have established and hold seniority in various job classifications in the Track Sub-Department of the Maintenance of Way and Structures Department and were regularly assigned to Region System Gang TP13 when the instant dispute arose. The Organization asserts that beginning August 10, 2015 and continuing, the Carrier has refused to provide a second meal period when the Claimants worked more than three (3) hours of overtime continuous with their regular assignment. The Carrier acknowledged that on August 10, 2015, the Claimants worked more than three (3) hours overtime immediately following their regular assignments but contends that the Claimants did not comply with their Roadmaster's instructions to eat at a restaurant away from the work site and expense their meals. The claim under consideration herein was timely filed and properly processed on the property without resolution and thereafter progressed to this Board for final and binding adjudication.

During the processing of the claim the Organization has relied on Rules 28.A. and B. and 29.F. The Organization finds no factual dispute and contends that if the Claimants left the work site they would be disciplined as a result. Also, if they left the work site they would need additional time to wash up so that more than a thirty (30) minute lunch period would be required. The Carrier acknowledges that the Carrier may provide a meal in one of several ways. Finally, there was no emergency that would have necessitated holding the Claimants on duty.

The Carrier posits that Rules 28A. and C. do not control, takes exception to certain Claimants who were absent from duty and asserts that this is not a continuing claim. Furthermore, the Claimants were told by their Roadmaster to leave the work site for their meal at one of the restaurants in the area and refused to follow his instructions, instead asking for an hour at the overtime rate. There is no basis for the two (2) hours and forty (40) minutes claimed by the Organization for a callout. The Organization has not met the required burden of proof. Because the claim embodies an irresolvable factual dispute it must be denied or dismissed.

At the outset of the response to the parties' contentions, we set forth the Rules that are central to the discussion.

**RULE 28. MEAL PERIOD**

- A. Regular meal periods shall be observed at the work site or other convenient location between the beginning of the fourth hour and the beginning of the seventh hour computed from the assignment starting time, unless otherwise agreed upon by the carrier and the affected employees (sic). The meal period shall not be less than thirty (30) minutes nor more than one (1) hour. Wash room facilities shall be provided where the job location requires a meal period to be observed at the work site. [7/29/91 Imposed Agreement]**
- B. It is not the intent of this rule to allow the carrier to require employees to miss a meal period. Whenever the meal period cannot be observed within the prescribed time period because of unusual circumstances and is worked, affected employees shall be paid on a minute basis at the straight time rate and twenty (20) minutes in which to eat shall be granted at the first opportunity without deduction in pay. [7/29/91 Imposed Agreement]**
- C. The company shall arrange to feed men assigned to work at wrecks, washouts or other emergencies once each six (6) hours, computed from the end of the last meal period, without expense to employees (sic) or deduction in pay, it being understood that this shall not apply in cases where employees regularly assigned to outfits equipped not only for lodging but for meals may be moved with such outfits to work under such emergency conditions. [ 7/29/91 Imposed Agreement]**

**RULE 29 OVERTIME**

- F. Employees required to render more than three (3) hours overtime service continuous with their regular assignment shall be accorded an additional meal period, the meal to be provided by the Carrier. Subsequent meal periods, with meals provided by the carrier, shall be allowed at intervals of not more than six (6) hours computed from the end of the last meal period. [From Art, VI, Sec. 3 2/06/92 Imposed Agreement]**

Several preliminary comments are in order. Because nothing in the record establishes that an emergency situation existed on August 10, 2015 or thereafter, Rule 28.C. is inapplicable. This dispute involves overtime continuous with regular assignments and not a callout, therefore the two (2) hours and forty (40) minutes called for in the claim would be inappropriate even if the claim were to be sustained. And, the Board finds no irreconcilable factual dispute that would require dismissal of the claim.

The Board looks to Rules 29.F., 28.A. and 28.B. for guidance in assessing this claim. Because the record establishes that the Claimants worked “more than three (3) hours overtime service continuous with their regular assignment, they were due an additional meal period. The Organization acknowledges that the Carrier has the discretion to provide the additional meal in one of several ways. The meal period may be provided at the work site or at a nearby restaurant away from the work site and, using Rule 28.A. as guidance, could last between thirty (30) and sixty (60) minutes. The Organization does not dispute the Carrier’s assertion that the Claimants were told by their Roadmaster to go to a nearby restaurant for the additional meal. Therefore, the Board finds that the Carrier did not fail and refuse to provide the overtime meal, as the claim states. The Organization contends that more than thirty (30) minutes would have been necessary had the Claimants gone off the work site for the meal, but there is no indication that the need for more than thirty (30) minutes was raised with the Roadmaster. The contention that the Claimants would have been disciplined for leaving the work site is rejected as inconsistent with the fact that they were told to go to a nearby restaurant and, moreover, purely speculative. Such speculation does not justify the refusal to follow the Roadmaster’s directive. The Carrier complied with the requirement in Rule 29.F. to provide the additional meal when the Claimants were told to visit a nearby restaurant and then to claim the meal expense. None of the Rules that the Organization has relied on gave the Claimants the right to decide that they would prefer more overtime pay to the additional meal. Indeed, Rule 28.B. states that the intent is to have the Carrier provide the meal period. The Claimants’ refusal to follow the Roadmaster’s instructions to eat at a local restaurant constituted a waiver of their contractual right. The Carrier offered; the offer was refused.

**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 15<sup>th</sup> day of December 2021.