

PUBLIC LAW BOARD NO. 1812

Award No. 3
Case No. 3
CL-75-64

PARTIES Southern Pacific Transportation Co. - Texas & Louisiana Lines
TO and
DISPUTE Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers,
Express & Station Employees - Southwestern Board of Adjustment No. 95

STATEMENT "Claim of the System Committee of the Brotherhood that:
OF CLAIM

1. Carrier violated the rules of the current Clerks' Agreement, Rule 30 (B) in particular, when on January 3, 4, 5, 6, 7, 10, 11, 12, 13 and 14, 1975, it did not allow Mr. J.C. Gilbreath, Third Trick Telegrapher-Clerk-Towerman, Tower 121, San Antonio, Texas, Seniority District No. 4 20 minutes without reduction in pay in which to eat and then refused to compensate him for 20 minutes at the pro rata rate of his position in addition to any other pay received on those dates in compliance with the provisions of the rules of the Clerks' Agreement.
2. Carrier shall allow Mr. J.C. Gilbreath an additional 20 minutes pro rata at the rate of his position for each of the dates enumerated above in addition to all other pay received on those dates, as compensation for his 20 minute meal period as provided for in Rule 30 (B)."

FINDINGS

Upon the whole record, after hearing, the Board finds that parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

This Claim is based on the alleged failure of Carrier to comply with the provisions of Rule 30 (B) of the Agreement. It is understood that there is a series of similar pending claims which will be disposed of based on the decision in this dispute. Rule 30 (B) provides:

"When conditions of service will permit, an employee working a shift of eight (8) consecutive hours shall be allowed twenty (20) minutes without reduction in pay in which to eat. When conditions of service does not permit twenty (20) minutes with pay in which to eat the employee will be allowed an additional twenty (20) minutes pay at the pro rata rate."

At the outset, Carrier objects to a letter dated September 21, 1976 from Petitioner as untimely, in view of the creation of this Board on August 31, 1976. This position is correct. However, it is also noted that the Organization gave Carrier notice of its desire to establish this Board on August 3, 1976; following that date and prior to August 31st, Carrier made some new investigations culminating in its letters and attachments dated August 12 and 25th. Although Carrier's material is timely, the integrity of the contractual process is impaired by the last minute barrage of new material shortly before the cut-off date with little, if any, time to respond. In the interest of effectuating the policies of the Act as well as the effective disposition of disputes, this last minute flirtation with time limits should be avoided. It also must be noted that this Board does not deem time checks conducted on August 24, 1976 relevant to conditions obtaining in January, 1975.

Carrier asserts, in contending, that it did not violate the above quoted rule, that (1) the rule does not require Carrier to permit employees to leave their work locations during the twenty minute meal period; that (2) at no time on the claim dates was Claimant denied permission to eat during his tour of duty; and (3) there is no provision requiring the twenty minute meal period to be consecutive. In support of its position, Carrier presented statements by various Yardmasters that, in addition to not denying towermen permission to eat during their tours of duty, they informed the towermen "...that they should take their meal period, when conditions of service permit, during their tour of duty." Carrier also relies in part on Third Division (N.R.A.B.) Award No. 13310 which held that a related claim was without merit, stating in part:

"Nothing is said about how this twenty minute period is to be assigned or taken. Had the parties intended to specify twenty "consecutive" minutes, they could easily have done so. Certainly the Board may not, by interpretation, add such language to the rule as negotiated and consummated by the parties."

Petitioner readily agrees that the Rule cited does not give employees the right to

leave their work locations during the meal period - and that contention is not part of this dispute. It is also argued that the issue of twenty consecutive minutes has long been resolved by various awards on a number of Carriers in related disputes, and a series of Awards are cited including Third Division Awards 6814, 17035, and 21029. In Award 17035, the Board stated:

"It is the opinion of the Board that the twenty minutes referred to in Article VII (a) means twenty consecutive minutes. The only reasonable interpretation of the rule is that at some time during the eight hour period the employee is to have some twenty minutes consecutively during which he can eat. The rule does not require that a specific twenty minute period be set aside. The Carrier's obligation under the rule is to schedule the work and personnel so that at some time the employees have twenty consecutive minutes in which to eat. Obviously, twenty one minute periods would not fulfill the function of a twenty minute meal period."

Petitioner emphatically denies that the Claimant was given permission to eat as alleged by Carrier on the dates in question. An understanding with respect to the implementation of the revised rule is cited by Petitioner. Such informal agreement was reached with the Trainmaster, San Antonio Division at a meeting on November 1, 1974 with officers of the Organization. At that meeting it is alleged that it was agreed that Yardmasters in the tower would grant permission for the meal period and, of course, following that the train dispatchers permission would be sought. Although it was not required by Agreement, the General Chairman of the Organization set up a procedure whereby employees in the tower were required to ask the Yardmaster's permission for their twenty minutes three times during their tour of duty, prior to processing a claim for pro rata pay. This procedure was followed by Claimant herein.

The dispute herein boils down to two points: must the Carrier designate a specific time for the meal period and does the rule require twenty consecutive minutes. The latter question must be answered first. We believe that the language referred to above from Award 17035 is persuasive. The parties intended a twenty minute meal period by their contractual language, not four five minute periods or some other breakdown of the time. Conventionally, if there is to be "break" whether for lunch

or other purposes, the time span should be read literally as agreed to by the parties rather than in some other fashion. Therefore, we find that the meal period should be twenty consecutive minutes.

The remaining question is more difficult. Carrier may, should it be desired, delegate to each employee the right to pick and choose his own time for the twenty minute break, based on the "conditions of service". However, that decision would also give the employee the right to say then, that he was unable to find such time and hence, claim pay, as provided in the rule. There is no question but that the Carrier has the burden of providing the meal period in question (c.f. Third Division Award 17178) as it sees fit. Carrier can't have it both ways as in this dispute. If the Yardmasters do not agree to the request for a designated meal time, as herein, but leave it to each employee as "conditions of service permit", they cannot later object to a claim for pay. It is obvious that this dispute should ultimately be resolved by an agreed upon procedure for setting the meal period; in the absence of such agreement, the provisions of Rule 30 (B) must be applied literally and each employee must be granted a twenty minute meal period, or pay in lieu thereof. The burden is upon Carrier in each instance to establish that the employee was indeed granted the requisite time, in the event of controversey.

AWARD

Claim sustained

ORDER


Carrier will comply with this Award within thirty days from the date hereof.



Neutral Member



Employee Member



Carrier Member

Dated: 11/29/47
Houston, Texas