

Award No. 3

Case No. 3

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

National Railroad Passenger Corporation (AMTRAK)

Statement of Claim

1. The Carrier violated the Agreement when it assigned Substation Electricians N. Sims, E. Schnoering, F. Johnson and L. Spencer of Gang P-062 to work from 7:30 A.M. to 4:00 P.M. after it had changed the starting time of said gang to 8:00 A.M. beginning on August 6, 1985

2. That the above-named claimant shall each be compensated for an additional one-half hour at their proscribed pro rata substation electrician rates for August 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29 and 30, 1985 and September 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1985 and continuing until violation in Paragraph (1) is corrected.

Findings and Opinion

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved

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herein.

The parties to said dispute were given due and proper notice of hearing thereon.

Claimants were assigned to work from 7:30 a.m. to 4:00 p.m. with a thirty minute unpaid lunch period in accordance with Rule 57 which reads in pertinent part:

MEAL PERIOD

(a) When a meal period is allowed, it will be between the ending of the fourth hour and beginning of the sixth hour after starting work.

(b) If the meal period is not afforded within the time limit, specified in paragraph (a) of this Rule 57, and is worked, it will be paid for at straight time rate and twenty minutes allowed for lunch at the first opportunity without loss of pay.

(c) Except as provided in paragraphs (e) and (f) of this Rule 57, the meal period shall be thirty (30) minutes; however, a shorter or longer meal period may be established by agreement between the representative and Chief Engineer.

* * *

(e) For regular operations requiring consecutive eight hour tricks, employees assigned thereto will be allowed a maximum of twenty minutes in which to eat without deduction in pay.

On August 6, 1985, the Carrier established two additional positions on Gang P-062 (ASR-1, Relay Electrician and NYT2-1, Electronics Technician). These positions were bulletined and assigned with a tour of duty between 8:00 A.M. and 4:00 P.M. These two new positions were advertised and awarded with a twenty minute paid meal period. Sometime in October, after the instant claim had been made, the Carrier re-posted the positions with a

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changed schedule for the tour of duty of 7:30 A.M. to 4:00 P.M.

It is the Organization's position that Rule 56, SUSPENSION OF WORK TO ABSORB OVERTIME, has been violated. That rule reads:

An employe will not be required to suspend work, after starting any daily assigned working period, for the purpose of absorbing overtime.

The Organization contends that by allowing a paid meal period for two new members of a crew the Carrier in effect was requiring the other members of the crew to suspend work, since if two members of the crew were being paid for the meal period, the Organization believes that all members of the crew should have been so paid.

The Carrier admits that it made a mistake when it posted the new positions and that the individuals who filled those two new positions were not entitled to a paid meal period since they were not working a second shift. The Carrier agrees that those two individuals should not be penalized for the Carrier mistake, but since the Carrier rectified the error by re-posting the positions to have the same starting time as the other members of the crew, it does not believe that the original members of the crew were disadvantaged or that the rules require any additional payment to them.

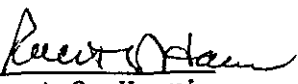
This Board is of the view that the reading of the applicable rules as suggested by the Organization, while literally possible, does not conform to the normal usage of the language contained in the rules and forces a result which cannot be said to be the intention of the parties when the rules were established. The Claimants were not asked to work additional time nor were they in


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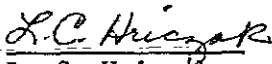
any way disadvantaged by the different working hours of the two new gang members since the new gang members were not working along side the original gang members. The Claimants were not asked to cease work in order to avoid the payment of overtime, but rather in accordance with the rules regarding meal periods. While the Carrier inadvertently violated the meal period rule to the benefit of the two new gang members, it did not in any way harm the Claimants.


Award

Claim denied.


Robert O. Harris
Chairman and Neutral Member


J. Dodd
For the Organization
[Concur / Dissent]


L. C. Hriczak
For the Carrier
[Concur / Dissent]

dated, , 1988
Philadelphia, PA