

PUBLIC LAW BOARD NO. 6867

AWARD NO. 11

CASE NO. 11

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to properly compensate System Gangs 9041, 9061 and 9081 for their overtime service between 18:00 and 20:00 hours on March 19, 2003, (System File UPRM-9436T/1363942).

(2) As a consequence of the violation referred to in Part (1) above, all employees of System Gangs 9041, 9061 and 9081 shall now '*** be compensated at double their respective applicable overtime rates of pay for the two hours of overtime as cited, which they worked beyond six hours from the end of their regularly assigned meal period, without being accorded another meal period."

FINDINGS:

Upon the whole record, after hearing, this Board finds that the 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, like the one dealt with by this Board in Award No. 9, raises a second meal period issue for System Gangs that are required to work overtime continuous with their regularly scheduled hours. The following provisions of Rule 32 - Meal Periods, are pertinent to this dispute:

(e) When employees are required for overtime service, they will be accorded subsequent meal periods as specified hereinafter:

(1) Employees required to work overtime following and continuous with their regularly assigned hours will be accorded a meal period during said overtime service within six (6) hours from the end of the regularly scheduled meal period. **No meal period need be allowed when employees are released from work and returned to their home station, headquarters location, or outfit cars within three (3) hours after their assigned quitting time.** Subsequent meal periods will be granted at six (6) hour intervals with it being understood the six (6) hour interval period would begin to toll at the end of the last meal period allowed.

* * * * *

(6) In the event a meal period is not afforded at the designated time, the employees will be compensated at double their existing rate of pay from that time until such time as they are accorded a meal period; there will, however, be no compounding of the penalty payments provided herein.

(Emphasis added)

This case also deals with the interpretation and application of the highlighted portion of Rule 32(e)(1) involving the provision of subsequent meal periods. Pursuant to Rule 40(b), System Gangs 9041, 9061 and 9081

worked four ten (10) hour days from Monday through Thursday, with Friday, Saturday and Sunday observed as rest days. Their regular working hours were from 6:30 a.m. until 5:00 p.m. inclusive of a 30 minute meal period that was observed from 11:30 a.m. until noon. On Wednesday, March 19, 2003 these gangs continued working until 8:00 p.m. without being afforded another meal period.

The correspondence on the property raises similar positions as those asserted by the parties, and set forth, in Board Award No. 9. In summary the Organization asserted that Claimants were entitled to a second meal period at 6:00 p.m., worked 3 hours overtime on the claim date, and that Carrier is responsible for two hours of penalty pay for each Claimant for failure to give them a subsequent meal period. Carrier indicated that employees confirmed the accuracy of their time and payroll records by signing them, and that it is not obligated to give a second meal period to Claimants since they were released within three hours of their assigned quitting time.

The arguments of the parties with respect to the proper interpretation of Rule 32(e)(1) and (6) are set forth fully in Award No. 9 and will not be repeated herein. The issue raised in this case - whether Claimants are entitled to penalty pay from the sixth hour after their regularly scheduled meal period until they are released from work when working 3 hours of overtime continuous with their regular schedule - involves the same interpretation of Rule 32(e)(1) as the Board undertook in Award No. 9. A careful review of the record convinces the Board that its interpretation of Rule 32(e)(1) and (6) is equally applicable to the facts of this case, and does not support the Organization's position that Claimants are entitled to penalty pay under Rule 32(e)(6) for the overtime

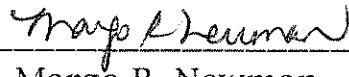
hours worked on March 19, 2003, since they were all released from work within three hours of their assigned quitting time.

In Award No. 9 the Board determined that Rule 32(e)(1), as written, and consistent with its past application, provides an exception to the general requirement that Carrier must furnish meal periods every 6 hours for employees working in continuous overtime service who are released from work within 3 hours of their assigned quitting time, and that such "assigned quitting time" applied to the normal schedule of a gang working over 8 hours/day pursuant to Rule 40. We rejected the Organization's argument that Rule 32(e)(6) is a separate monetary obligation that arises independently if Carrier chooses not to provide a meal period during that 3 hour overtime service under Rule 32(e)(1), finding that such interpretation would negate the operation of the specific language adopted by the parties to create an exception to the provision of a subsequent meal period in Rule 32(e)(1).

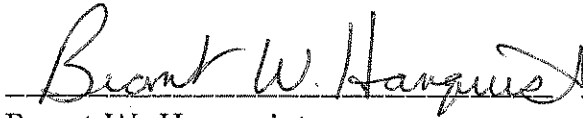
Additionally, the Board concluded that the entitlement to a meal period at a specific time must exist prior to the payment of penalty pay for its denial under Rule 32(e)(6). Since we found that the second sentence of Rule 32(e)(1) negates such entitlement for employees working overtime who are released within 3 hours of their assigned quitting time, which is the situation with Claimants herein, we must reject their entitlement to the penalty pay sought by this claim.

AWARD:

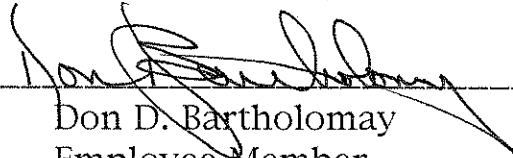
The claim is denied.



Margo R. Newman
Neutral Chairperson



Brant W. Hanquist
Carrier Member



Don D. Bartholomay
Employee Member

Dated: 8-1-07

Dated: 8-1-07