

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Seaboard System Railroad (former L&N Railroad)

STATEMENT
OF
CLAIM:

1. Carrier violated the agreement when members of Gang 5N78 were not granted meal period as provided in Rule 34(a).

2. Each claimant listed in claim letter dated November 13, 1984 to Division Engineer Beckman shall be compensated for 30 minutes at overtime rate beginning September 17, 1984 and continuing until the violation of Item 1 above was discontinued.

FINDINGS:

Claimants are members of Tie Gang 5N78, a floating gang housed in camp cars headquartered at Wartrace, Tennessee. During the period in question, they began work at 6 a.m. Their meal period, under the terms of Rule 34(a), is to be allowed

"between the ending of the fourth hour and the beginning of the seventh hour after starting work, unless otherwise agreed upon by the employees and the management. Unless acceptable to

a majority of employees directly interested, the meal period shall not be less than 30 minutes nor more than one hour."

When members of the Gang complained that the 10 a.m. meal period came too early, the foreman permitted the Gang to take their meal at 12:30 p.m., a time beyond the beginning of the seventh hour specified in Rule 34(a). It is Petitioner's position that the Rule was therefore violated and the present claim must be sustained. In that regard, it cites Rule 57(e) which provides:

"Local officers and local committees or employees shall not enter into local understandings or agreements, except as specifically authorized in certain rules of Agreement."

In Petitioner's view, the only specific authorization granted by Rule 34(a) for a change by a majority of employees relates to the length of the meal period. Petitioner reasons that commitments contained in Rules 34 and 57 were reached through the collective bargaining process and cannot be varied by individual agreements or waived without the consent of Carrier and the Organization.

The exclusive bargaining representative of Gang 5N78 is of course the Organization and local understandings that are in conflict with the terms of the collective bargaining Agreement will not be given effect. However, in agreeing upon Rule 34(a), the contracting parties have at least given each other a reasonable basis for believing that the employees themselves may agree with management to change the time for a meal period. If

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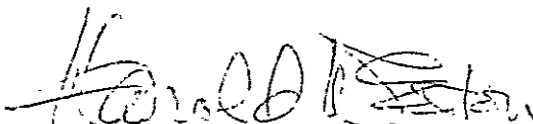
it were intended that only the General Chairman or bargaining committee could agree to the change, appropriate language could have been utilized by the well experienced negotiators to make that requirement clear.

It is this Board's conclusion that the meal hour could be changed, as it was in the present case, by an understanding between management and the employees. That conclusion is perfectly consistent with the terms of Rules 34(a) and 57(e).

Even if a contrary result were reached, the claim for pay would not be upheld. The claimants will not be permitted to enrich themselves unjustly by agreeing to a change and then seeking to profit by the theory that the change was wrongful.

AWARD: Claim denied.

Adopted at Jacksonville, Florida, Dec. 19, 1985.



Harold M. Weston, Chairman



Carrier Member



Employee Member