

PUBLIC LAW BOARD NO. 4138

Award No.: 14

Case No.: 14

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

First: that the agreement was violated when the Carrier A) did not compensate the members assigned to this gang (listed in the Organization's letter to Mr. Beckham, Division Engineer, copy enclosed) for working through their meal period as outlined in Rule 34(a) and Rule 34(c); B) altered the working hours from eight (8) hours per day five (5) days per week, as outlined in Rule 28(a), and C) did not make agreement with the Organization and its employees to alter A) and B) above, under Rule 57(a).

Second: that the Carrier compensate each claim listed in the Organization's letter to Mr. Beckham, for thirty minutes overtime and one hour straight time for each work day from May 6, 1985 to June 10, 1985 at the claimants' rates of pay.

FINDINGS

Claimants were members of Tie Gang 5N78 headquartered at Tullahoma, Tennessee. Gang 5N78 was a floating gang housed in camp cars.

Rules 34(a), (b) and (c) and 57(e) provide:

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RULE 34. MEAL PERIOD

34(a) When a meal period is allowed it will be 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.

Where the majority of the employees in a gang agree to take only 30 minutes for their lunch period, that may be done by advising the Division Engineer at least three days in advance. The same handling will be given each time the meal period is changed. Employees assigned to camp cars, camps, highway trailers, hotels or motels will be allowed the full meal period at their headquarters.

34(b) If the meal period is not afforded within the allowed or agreed time limit and is worked, the meal period shall be paid for at time and one-half rate and 20 minutes with pay in which to eat, shall be afforded at the first opportunity. Time allowed for meals will not terminate the continuity of service.

34(c) The time at which the meal period will be allowed under this rule may be varied at the convenience of the railroad company to meet the service requirements, and no punitive payment shall accrue if the meal period is granted within the two-hour spread provided.

For example, assuming that the starting time is 7 A.M. and that one hour is generally taken for meal between 11:00 A.M. and 12:00 Noon, if economical service requires it, the meal hour may be taken from 11:30 to 12:30, from 12:00 Noon to 1:00 P.M., or any other convenient time within the two hours. If the two hours between 11:00 A.M. and 1:00 P.M. are worked, then one hour of the two must be paid for a time and one-half rate and the men allowed 20 minutes in which to eat, at first opportunity, without deduction of pay.

57(e) Local officers and local committees or employees shall not enter into local understandings or agreements, except as specifically authorized in certain rules of agreement. (Underscoring added)

Gang 5N78 worked Monday to Friday with Saturday and Sunday as rest days. The gang went to work at 6:00 a.m. and 7:00 a.m. on account of curfews issued by the Carrier's Transportation Department. Track time could not be secured after 1:30 p.m. The gang was paid eight hours at pro rata

rate on each day during the period in question, exclusive of its meal period. Based on the scheme established by Rule 34(a), the gang should have taken its meal period at 10:00 a.m. and 11:00 a.m. respectively. The gang objected that this was too early to eat. Foreman K. R. Wall's responded to the objection of the gang and allowed it to take its meal period at 1:00 p.m. and 1:30 p.m.

The bulletin advertising positions as prescribed in Rule 15 does not state or fix a time for the meal period.

The issue to be decided in this dispute is whether the Carrier violated the Agreement as pertains to Claimants' meal period; and if so, what should the remedy be.

The position of the Organization is that the Carrier violated the Agreement by not permitting Claimants to take a meal period and altering Claimants' working hours, both without their consent. The Organization maintains that its position is supported by the fact that in progressing this claim, the Carrier never refuted the Organization's position in its appeal, stating only that this matter was identical to Award No. 68 of Public Law Board No. 2363. Further, the Organization maintains that there was a violation because the Division Engineer stated that no agreement was made with Claimants' gang and that the Division Engineer had no knowledge of Claimants' gang not taking a meal period. Finally, the Organization maintains that it was not advised that the members of Claimants' gang had

agreed to alter the Agreement, and they are not empowered to do so even if they did agree.

The position of the Carrier is that it did not violate the Agreement and that the Organization has failed to sustain its burden of proof. The Carrier contends that the Agreement permits management and employes to agree to alter the meal period to a time other than that between the ending of the fourth hour and beginning of the seventh hour; this is precisely what Claimants and their manager did. The Carrier further contends that it is the employes themselves who have this right and not the General Chairman; nor can the General Chairman undercut the employes' decision. The Carrier also maintains that there is no meal period fixed by the bulletin of the positions here involved.

After review of the entire record, the Board finds that the Carrier did not violate the Agreement.

The facts of this case are quite clear. The Organization has failed to sustain its burden of proving that Claimants were required to work through their meal period and that the Carrier altered Claimants' working hours.

The evidence shows that the Carrier exercised its managerial prerogative in judging when tracks could be available for work by maintenance of way gangs and its sound discretion in not having gangs work beyond the curfews set by the Transportation Department. The Carrier is, after all, in business and cannot have a curfew on its tracks at the times its trains need

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to be in operation. Therefore, it has the right to place a curfew which ends early in the day, -- here 1:30 p.m. -- thereby requiring crews to begin work early in the morning. If this early start time means that the meal period is too early to suit the preference of the gang, as it did here, the gang can request an alteration of the meal period. No meal period is fixed by the Agreement or the bulletin for these positions. The gang's objections to Foreman Walls as to the early meal period constituted a request for alteration of the time requirements set forth in the agreement, and Walls consented.

All this activity is authorized under the Agreement. Rule 57(e) permits the entering of local understandings only if otherwise authorized by the Agreement. The provisions of Rule 34 are just such authorization. There is no question but that it is pursuant to Rule 34 that the meal period was altered to a more agreeable time for the Claimants' gang. There is no requirement that senior Organization officials approve such an alteration.

AWARD

Claims denied..

Nicholas James
Neutral Member

B. Claud Sweatt
Carrier Member

Bryce L. Walls
Organization Member

Date: April 3, 1990