

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

With Referee David Dolnick

Award 23 184

Docket 43 106

PARTIES TO DISPUTE {  
                  { Brotherhood of Locomotive Engineers  
                  {  
                  { Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Case No. 78-25 Claim of M. E. Horton, Engineer Time Claim No. 17 dated August 30, 1977 for working by second meal period."

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

Claimant, an Engineer from the extra board, worked on a yard work train from 7:30 A.M. to 7:30 P.M. He received a meal period from 12:00 noon to 12:20 P.M. It is Employes' position that he was entitled to an additional meal period of 20 minutes at the pro rata rate under Article 40 of the Agreement. This claim was, accordingly, presented. In the Joint Submission before this Board, Carrier's Superintendent states: "Engineman on work train is paid at roadway work train rate regardless of where he works and is not entitled to allowance in lieu of second lunch".

In the "Examples" following Article 40 the question is asked whether a crew required to work overtime is entitled to a second lunch period. The answer is yes, "Between the four and one half (4½) and sixth (6th) hour after completion of the first lunch period". Claimant worked more than 4½ hours after his first meal period.

There is nothing in Article 40 that differentiates or exempts yard work train crews from the meal period provisions. Pay differentials and service demands are provided for in other rules in the Agreement. Carrier has cited none that directly or even by inference exempts work train crews from the provisions in Article 40.

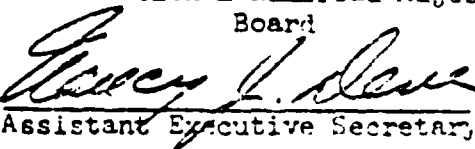
The language in Article 40, supported by the noted example, shows a clear and unambiguous meaning and intent. Such contract language may not be ignored or modified by an alleged past practice, if one did exist. Carrier's allegations of a practice on the property are general, not supported by any probative evidence. Such an allegation is mere assertion.

AWARD: Claim sustained.

DATED AT CHICAGO, ILLINOIS  
THIS 6th DAY OF September 1979

NATIONAL RAILROAD ADJUSTMENT BOARD  
BY ORDER OF FIRST DIVISION

ATTEST: Executive Secretary  
National Railroad Adjustment  
Board

By:   
Assistant Executive Secretary