Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25047
Docket No. 44688
99-1-98-1-S-6754

The First Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

(United Transportation Union
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Appeal in behalf of various Bensenville yardmen for basic penalty day when not allowed to go to lunch within their eight hour (8') shift on various dates and assignments beginning July 19, 1995 through November 10, 1995 per Attachment 'A.'"

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This dispute involves numerous claims, each for a day's pay, made by yardmen at Carrier's Bensenville Yard, asserting they were not afforded a lunch break as required by Article 112 of the 1973 General Labor Agreement. That Rule reads as follows:

"ARTICLE 112 — LUNCH TIME

Section (a) Yard crews will be allowed twenty minutes for lunch between four and one-half and six hours after starting work without deduction in pay.

Section (b) Yard crews will not be required to work longer than six hours without being allowed twenty minutes for lunch, with no deduction in pay or time therefor.

Section (c) Sections (a) and (b) of this rule apply to switchtenders, but they will be held responsible for their regular duties during lunch period.

NOTE: The lunch period must be given and completed within four and one-half and six hours.

Question: If a yard crew, through some unforeseen circumstances, be on duty fourteen hours, would the crew be entitled to a second period in which to eat, and if so, when would it begin?

Decision: Sections (a) and (b) apply to both the first and second lunch period. In the case cited, crew would be entitled to the second lunch period six hours after completing the first lunch period. In either case, switchmen will not be worked longer than six hours without being given an opportunity to eat.

Section (d) Shelter shall be provided for switchmen and switchtenders when they go to lunch.

NOTE: Switchmen will be given a reasonable length of time to secure a hot meal after they have worked a sufficient time under the rules to be entitled to a second meal period, with the understanding there will be no abuses of this privilege."

The Carrier avers the yard foreman is in charge of the crew, and often determines when and where the meal period will be taken. It submits these crews operate over a

vast territory in the Chicago metropolitan area, and often work on foreign properties. According to the Carrier, it would be difficult for its yardmasters to keep track of each crew and tell them when to stop to eat. Thus, says the Carrier, when the crew decides to take its meal break, the foreman notifies the yardmaster, tower operator or dispatcher controlling the territory. Unless there is evidence of abuse, the Carrier submits the timing of the break is up to the foreman, subject to specific operating conditions. The Carrier cites Award 100 of Public Law Board No. 1185 (UTU - Delaware and Hudson) as holding:

> "There is no showing that Claimants were required to work through their lunch period, or that the Carrier failed to afford Claimants the opportunity to take their lunch period within the proper time bracket. Claims of this nature are usually sustained when the work practice is for crews to obtain permission to take a lunch period which permission is refused, or where the Carrier directs the timing of the lunch period, and does not do so within the provisions of the Rule. Here it appears the work schedule was voluntary and the failure to take a proper lunch break was within the discretion of Claimant."

It may very well be the case that the Carrier has given yard foreman the authority to determine when the crew shall stop to eat. There is, however, no evidence before this Board to show that the employees were made aware of the fact that they have such authority, nor is there any indication they were given guidance as to how that authority is to be exercised. But even if such authority had been clearly granted, there may be instances where the crew was denied an opportunity to eat within the time brackets, or at all, because of operating conditions. In such cases, the Carrier has the right to insist that employees claiming a penalty identify the event with sufficient specificity that it may be investigated. In any case, a claim stating nothing more than "not being allowed to go to lunch" gives no indication that permission was requested and denied. We do not accept the Organization's argument that the employees may simply wait to see if someone is going to tell them to go to lunch, and then file a claim if nobody does. A meal break is not denied if it has not been requested.

In the case before the Board, we have numerous claims giving varied reasons. Of those claims, only three give any indication that permission was requested and denied. In the claim of D. F. August for August 9, 1995, the reason for the claim is "not allowed to go to dinner per YDM L. Martz." On November 4, 1995, Foreman J. M. Romano,

filing a claim for himself and Helper G. G. Grune, wrote, "Entire crew claims 8 hrs. straight time for being denied lunch. I.C. Yardmaster Bob Schultz denied us our meal period on authority of Chief Yardmaster at Bensenville, Willy Wilson." Foreman Romano made an identical statement on his November 5, 1995, claim on behalf of himself and Helper A. G. Desardi. The Carrier denied each of these three claims, stating, "No basis to claim. No schedule rule or agreement to support claim." The Board considers these claims to establish a prima facie case that Claimants, on these three dates, requested a meal period and the request was denied. The Agreement, therefore was violated.

We do not agree that these claims warrant the eight hour penalty sought by the Organization. The Carrier argues that former Milwaukee Road employees should not enjoy a benefit greater than that given to other Soo Line employees. It avers that Soo Line crews are compensated twenty minutes at the straight time rate when they are not permitted to take a meal period within the bracket time, but are afforded a meal period at some other time during the shift. When not permitted to eat at all, says the Carrier, the crews receive twenty minutes at the overtime rate. It is not for this Board to determine if that penalty is fair on the Soo Line; that is a matter we leave to those parties. We do, however, think fairness requires parity between the former Milwaukee Road employees and the rest of the Carrier's employees. Accordingly, we will direct that the three claims identified in the above paragraph be sustained to the extent that the Claimants therein are to be compensated twenty minutes at the overtime rate of pay. As the balance of the claims do not provide a sufficient basis to conclude the Claimants therein requested a meal period and were refused the opportunity to take one, they will be denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 9th day of September 1999.