

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25311
Docket No. 44976
02-1-00-1-B-2152

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

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Belt Railway Company of Chicago

STATEMENT OF CLAIM:

"Claims of Engineer T. Malone for 20 minutes at time and one-half rate for second lunch period during his tour of duty on the 12:01 am Transfer Job on 2/16/1999 and Engineer M. Graves for two 40 minute lunch period payments during his tour of duty on the 10:00 am Transfer Job on 5/21/1999 and others set forth in "Attachment A", for being required to perform service and not being compensated for lunch periods in Violation of Article 10 of the agreement and Public Law Board No. 4884, Award No. 4 dated January 31, 1991. Claims involved in this dispute were identified in handling as Claims Nos. E-33, E-34, E-35, E-104, E-105, E-106, E-107, E-108, E-109, E-110, E-111, E-112, E-113, E-114, E-115, E-116, E-117, E-118, E-119, E-120, E-121, E-122, E-123, E-124, E-125, E-126, E-127, E-128, E-129, E-130, E-131, E-132, E-133, E-134, E-135, E-136, E-137, and E-138-99."

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.

As noted in the Submission to the Board by both parties, the issue in dispute in this case is a narrow one. It involves conditions under which Engineers can legitimately claim a specified penalty payment for working through their lunch period. Article 10, Lunch Time, of the parties' Agreement clearly spells out the terms under which penalty payments will be made. These specific terms and conditions are not an issue in this case.

What is at issue, however, is the Carrier's position that before an Engineer incurs a lunch period violation requiring penalty pay, he must have prior approval of the Chief or Assistant Dispatcher (in the case of Transfer Crews), or the Trainmaster or Assistant Trainmaster (in case of Yard Crews).

While Article 10 of the Agreement makes no mention of the requirement of prior approval before a late lunch penalty can be incurred, the Carrier contends that it has made its position clear by notices that clearly outline the Carrier's policy on the issue.

Article 10, paragraphs I and J, of the Lunch Time Article specify the Carrier's desires concerning how and when crews will take their lunch periods. They read as follows:

- "I. All members of a crew will take their lunch periods as a unit when instructed by Company officer or the conductor of their crew. The right of the Carrier to require that meal periods for train and engine crews be taken at the same time is recognized.
- J. 'Crews,' as referred to above, covers trainmen and engineers, car retarder operators, fieldmen and flagmen."

The Carrier has submitted in the record copies of two notices it contends clearly outline its position on authorization of lunch period penalty payments. They read as follows:

**"OFFICE OF SUPERINTENDENT TRANSPORTATION NOTICE NO.
9. DATED DECEMBER 31, 1998 - IN EFFECT 12:01 AM - JANUARY
1, 1999:**

TO ALL CONCERNED:

Conductors are responsible for insuring that their crews are given all lunch periods on time in accordance with current Agreement. Before a lunch penalty is incurred by any crew, pilot or utility man, authorization must be obtained from the Trainmaster or Assistant Trainmaster. Trainmasters and Assistant Trainmasters authorizing lunch penalties must complete BRC Form 12-19 (Lunch Penalty Authorization Report) and submit completed reports to the Crew Board Office at the conclusion of their tour of duty. Crew Board personnel in charge of processing time slips will not allow any lunch penalties without a signed BRC Form 12-19 authorizing the penalties. These instructions supersede all previous instructions pertaining to the authorization of lunch penalties for BRC non-leased crews.

NOTICE NO. 25 - EFFECTIVE IMMEDIATELY - DATED APRIL 24, 1999:

TO ALL CONCERNED:

All Conductors performing duties on Transfer assignments, all Switchmen performing duties as Flagmen, all Switchmen performing duties as Utility Men and all Engineers performing duties as Pilots, working under the jurisdiction of the Chief or Assistant Chief Dispatcher must contact the Chief or Assistant Chief Dispatcher immediately upon going on duty and at the end of their tour of duty.

At the completion of their tour of duty, the above listed employees must inform the Chief or Assistant Chief Dispatcher of the exact time their assignment went off duty and any penalty payments claimed. The Chief Dispatcher or Assistant Chief Dispatcher will review the information with the employees for accuracy.

The Chief Dispatcher or Assistant Chief Dispatcher will immediately notify the Crew Board Office of the off duty times and penalties claimed. Any time slips submitted by the above-mentioned assignments that do not agree with the reported information provided by the Chief Dispatcher or Assistant Chief Dispatcher will not be processed by the Crew Board Office until reviewed by the Superintendent or Assistant Superintendent Transportation.

Additionally, the Chief Dispatcher or Assistant Chief Dispatcher will continue to maintain the written record, on the form currently in use, for all tie-up times and penalties authorized for assignments performing duties under their jurisdiction."

The Organization contends that the case before the Board has been settled by Neutral Vaughn in Award 4 of Public Law Board 4884. That case involved the same parties and issues that are involved in this case. The Organization also adds that it objected to the terms of Notice No. 9 and 25 cited above as unreasonable and in violation of Article 10. They are designed to frustrate the efforts of Engineers to receive payment of legitimate lunch period violations.

The Board carefully reviewed the extensive record of this case. As a result of that review, we have concluded that Award 4 of Public Law Board 4884 does indeed resolve the issue before us. It has been a longstanding policy of the Board that well reasoned, clearly argued, and well-explained Awards specifically on point with the case being reviewed are given precedential status in the Board's deliberations. We find that to be

the case in this instance. Award 4 of Public Law Board 4884 contains wording that clearly supports the Board's thinking. It clearly summarizes our position here.

"... There is no mention of any requirement for approval by a Carrier official before such a penalty may be incurred; and there is nothing which requires an engineer working as part of a crew under the supervision of a conductor to initiate a request for a lunch period. The determination whether and when to schedule lunch is a matter determined by the operating needs of the Carrier and is reached between the appropriate Company officer and the Conductor, who functions, for purposes of work management and scheduling, as a 'foreman,' and certainly as the Carrier's agent in the crew for such purposes." (Emphasis added.)

This Award cannot be interpreted to mean that the Carrier does not have authority to direct when crews will take their lunch period. The Board can find no fault with the Awards cited in the Carrier's Submission to support that notion. They differ, however, with the case at bar, since they all address situations in which personnel had not followed orders to go to lunch or Supervisors did not direct their crews to take timely lunch breaks. The instant case involves claims of Engineers seeking penalty payment for not taking lunch periods they were not directed to take by the Conductor in charge of the crew or by any Company official.

There is nothing in any of the Notices or Contract language pertinent to this case to justify the Carrier's position that the Engineers, despite what the Conductor in charge of the crew does, has the obligation and authority to contact Carrier Officials to get permission to incur a lunch period penalty. Under the terms of the current Agreement, Engineers qualify for late lunch payments if they are given late lunches.

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 10th day of April, 2002.