

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32516
Docket No. MW-31563
98-3-93-3-554

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier required Track Crane Operator Bill Sexton to obtain OTE Work Authorities which required him to remain at his work site performing the work of monitoring his radio to allow train traffic through his work area during his designated lunch period while working near St. Albans, West Virginia beginning November 18, 1991 and continuing [System File C-TC-8483/ 12(92-360) COS].
- (2) The Agreement was violated when the Carrier required B&B Foreman C. Stratton to obtain OTE Work Authorities which required him to remain at his work site performing the work of monitoring his radio to allow train traffic through his work area during his designated lunch period while working near St. Albans, West Virginia beginning January 6, 1992 and continuing [System File C-TC-5303/12(92-362)].
- (3) As a consequence of the violation referred to in Part (1) above, Track Crane Operator Bill Sexton shall be allowed one-half (1/2) hour's pay per day at his straight time rate of pay beginning November 18, 1991 and continuing until this matter is resolved.

- (4) As a consequence of the violation referred to in Part (2) above, B&B Foreman C. Stratton shall be allowed one-half (1/2) hour's pay per day at his straight time rate of pay beginning January 6, 1992 and continuing until this matter is resolved."

FINDINGS:

The Third 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.

According to the Organization, Claimants were required to monitor their radios to allow train traffic through their work area during their designated lunch periods while working near St. Albans, West Virginia. Track Crane Operator Sexton's claim began on November 18, 1991 and continues whereas B&B Foreman Stratton's claim began on January 6 and was cut off on March 2, 1992.

The Organization argues that Claimants were entitled to be paid for their lunch period pursuant to Rule 42 - MEAL PERIOD - TIME which states:

"The meal period will be between the end of the fourth hour and the beginning of the seventh hour after starting work, unless otherwise agreed upon. If the meal period is not afforded within such allowed or agreed time limit and is worked, it will be paid for at straight time rate, and twenty (20) minutes for lunch allowed at the first opportunity with pay. This does not apply to Rule 44. It is agreed in applying this rule, if the full regular meal period is worked and as much as twenty (20) minutes in which to eat is not afforded, the meal period will then be paid for at time and one-half rate instead of at straight time rate."

The Organization insists that Carrier neither denied nor challenged the fact that each Claimant was required to remain on duty at his assigned work site on the dates in question. The Organization maintains that Claimants were obligated to remain on duty at the work site and were not permitted to leave such for the entire period of time that a 707 Work Authority was in effect. Accordingly, the Organization insists that Carrier required Claimants to perform service during their assigned meal period and as such they were entitled to be compensated pursuant to Rule 42.

Carrier, on the other hand, asserts that remaining at their work site monitoring their radios during meal periods does not violate Rule 42 of the Agreement. Specifically, Carrier argues that Article VI of the imposed 1991 BMW National Agreement allows it to require employees to remain at the worksite. Section 1 - Regular Meal Period provides:

"Regular meal periods shall be observed at the work site or other convenient location between the beginning of the fourth hour and the beginning of the seventh hour computed from the assignment starting time, unless otherwise agreed upon by the carrier and the affected employees. The meal period shall not be less than thirty (30) minutes nor more than one (1) hour. Wash room facilities shall be provided where the job location requires a meal period to be observed at the work site." (Emphasis added)

In short, Carrier argues that having a Foreman monitor his radio is part of the supervisory functions of the position. Therefore, it insists that the claim is without merit.

We conclude that the claim must be sustained for those days where it has been substantiated that the Claimants performed the duty of monitoring their radios during their meal period. Stated simply, we agree with the Organization that monitoring radios is the performance of work because an employee is precluded from enjoying his regular meal break. Therefore, we are persuaded that Carrier violated Rule 42 by not compensating the Claimants in accordance with that Rule.

One final point. While we have sustained the claims presented herein, we note that Carrier obviously has the right to direct Claimants, and other similarly situated employees, to turn off their radios during their scheduled meal periods. If the employees

fail to do so despite such a directive, we would conclude, in proper cases, that such employees would not be entitled to compensation.

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 Third Division

Dated at Chicago, Illinois, this 25th day of March 1998.