

PUBLIC LAW BOARD NO. 5939

Case No. 26

Award No. 26

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of Everett Engineer R. S. Bruland for a basic day's pay at the yard rate of pay in addition to all other earnings for May 29, 1997, account he was not allowed to take a meal period within six (6) hours from time of starting work.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

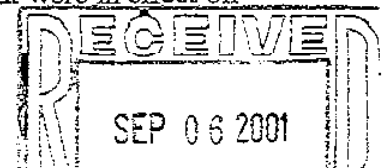
That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1932;

That this Board has jurisdiction over the dispute involved herein.

The pertinent facts that led to this claim are not in dispute. On May 29, 1997, the Claimant worked Yard Assignment 211G at Everett, Washington. He went on duty at 3:59 p.m. The Claimant was not allowed a meal period until he had been on duty for six (6) hours and ten (10) minutes. He therefore filed a claim for eight (8) hours' pay at the yard rate contending that the meal period rule was violated when he was not allowed a meal period within six (6) hours of starting work. The Carrier denied the claim and it was appealed to this Board for adjudication.

Everett, Washington is a former Great Northern yard. When the Chicago, Burlington & Quincy (CB&Q); Great Northern (GN); Northern Pacific (NP) and Spokane, Portland and Seattle (SP&S) railroads were merged into Burlington Northern, Inc. (BN), the BN assumed the contracts, schedules and agreements that were in effect on



the CB&Q, GN, NP and SP&S properties for locomotive engineers. Rule 25 on the Great Northern provided as follows:

RULE 25. Lunch Period.

Yard engineers will be allowed 20 minutes for lunch between four and one-half and six hours from time of starting work, without deduction in pay. Lunch period must be given and completed within the specified one and one-half hour period. If no lunch period has been permitted up to 6 hours, 40 minutes from starting time, employees are then entitled to stop work for twenty minutes at that time for such purpose. Engineers in yard and transfer service will not be required to work more than two hours overtime continuous with their regular shift without being allowed a second twenty minute period to eat

BLE Schedule Rule 25 has not been changed since the merger.

It should be noted that Rule 25 does not prescribe a penalty when yard engineers are not allowed a meal period when 4½ and 6 hours from time of starting work. Nor is there any evidence in the record before this Board explaining how the rule has been applied since the BN merger. Therefore, it is helpful to examine how similar meal period rules have been applied.

Switchman's Rule 12 on the Great Northern is virtually identical to Yard Engineers' Rule 25. In Award No. 5, Public Law Board No. 844 allowed a Switchman at a former Great Northern Yard in Superior, Wisconsin twenty (20) minutes' pay at the operative rate when he was not allowed a meal period between 4½ and 6 hours from the starting time of work. This Award was consistent with awards from other properties involving meal period rules similar to Yard Engineers' Rule 25.

The Organization has cited several awards from other properties that allowed train and/or engine service employees a basic day's pay (8 hours) for a violation of the meal period rule. Where employees were allowed a meal period during their tour of duty but the meal period was outside the parameters mandated by the meal period rule boards have allowed the affected employees 20 minutes' pay.

In the instant case, the Claimant was allowed a meal period during his tour of duty on May 29, 1997. Therefore, consistent with the aforementioned precedent, the Claimant is entitled to 20 minutes' pay at the operative rate consistent with settlements on the property for the Carrier's violation of erstwhile Great Northern Rule 25.

AWARD: Claim sustained to the extent indicated in the Findings.

The Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.

Robert M. O'Brien
Robert M. O'Brien, Neutral Member

Don M. Hahs
Don M. Hahs, Employee Member

Nick Markos
Nick Markos, Carrier Member

Dated: July 26, 2001