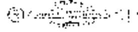
United Transportation Union

GENERAL COMMITTEE OF ADJUSTMENT
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
(COAST LINES)



W. E. Young
General Chairman

R. B. VanNeman
First Vice-Chairman

T. H. Botts
Second Vice-Chairman

A. W. Grossweiler
Third Vice-Chairman

D. L. Young
Secretary

September 14, 2005

Suite B 5
12465 Mills Ave.
Chino, CA 91710
Telephone (909) 548-2006
FAX (909) 548-2007

BX-article 8 & All Locals

All Local Chairman,

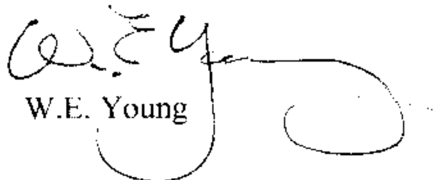
Attached to the letter are the Coastlines meal period settlement for yardmen and the two on property public law boards that helped this office make the decision to settle the issue.

The settlement allows for a few things. First yardmen still have the right to have lunch starting no later than five hours and forty minutes, and the yardmen still do not have to ask for the meal. If this meal period is not granted the yardmen still receive the six mile penalty and must be allowed to start their meal period before the beginning of the seventh hour or another six miles will be paid to the yardmen.

This is where the change takes place yardmen must now inform the Carrier before the tenth hour that they have not received a meal period and there is a suitable location to secure their meal. All this information must be included in your time slip to make it valid. If you are not at a place where a suitable location is available to secure a meal period the Carrier must allow you to eat as soon as operationally possible. If a yardmen follows the steps laid out in this letter and the Carrier denies the meal period the yardmen will be allow sixty two miles. With all of this being said the Carrier must include in their decline that they instructed the yardmen to eat at a certain time and certain location. If this is information is not provided by the Carrier the claim is automatically payable.

Attached are awards 24 and 25 from Public Law Board 3257 that were settled on the Former ATS&F (Coastlines) that the Carrier would not be required to pay a basic day if a meal period was not granted in eight hours or the entire shift. In award No. 24 the Claimant was on duty for nine hours and forty six minutes and was not allowed a meal period, and the penalty that was paid to the claimant was twelve miles. These two on property PLB'S carry significant weight with the arbitrators, and have been settled that we are to be allowed twelve miles for the entire shift be it eight hours or twelve hours.

Fraternally,



W.E. Young

AWARD NO. 25
CASE NO. 25

PUBLIC LAW BOARD NO. 3257

PARTIES) UNITED TRANSPORTATION UNION (CT&Y)
TO)
DISPUTE) THE ATCHISON, TOPEKA & SANTA FE RWY. (COAST LINES)

STATEMENT OF CLAIM:

"Claims of various yard engine foremen and helpers for one additional day's pay each on account of not being allowed a lunch period during the entire tour of duty or not being allowed to begin a lunch period by the end of the seventh hour on April 23, May 4, 9, 11, 19 and 23, 1979." (UTU File No. M-8-79; Carrier File No. 45-760-60-49)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The facts and circumstances which give rise to the instant claims are, for the most part, not unlike those in Case No. 24, which this Board decided in its Award No. 24. The cases differ only to the extent that: 1) the applicable rule, Article 8, had meantime been amended; and, 2) in addition to the claims involving instances wherein certain Claimants had gone the entire tour of duty without a meal period, as in Case No. 24, there are also instances where the meal period had been allowed, but not until after the expiration of the designated time limits.

The amendment to Article 8 involved Section 4, which was modified to read as follows:

> "Section 4. Yardmen not allowed a lunch period within the time limited provided in Paragraph (a) of this article shall be paid an allowance of twenty (20) minutes at overtime rate in addition to other earnings and by the beginning of the seventh hour will be allowed 20 minutes in which to eat without deduction in pay."

The Organization says that the above change in Section 4 of Article 8 was negotiated in good faith to insure that all yardmen would be allowed a meal period no later than the beginning of the seventh hour on duty. It says the requirements of the rule are mandatory; they do not permit the Carrier, at its option, to require yardmen to work more than the specified time without being allowed to begin a lunch period.

The Organization asserts that it would have been an exercise in futility and have negated the entire purpose of the rule to have included specific reference to a penalty payment in the event the Carrier failed to enforce the rule. In this respect, it says the penalty for violation of Article 8 is that contained in Article 2, the basic day rule, which states that eight hour or less shall constitute a day's work.

The Carrier submits that Section 4 of Article 8 was amended as the result of a Section 6 Notice which the Organization had served on the Carrier; the Organization having served notice for a four-hour penalty instead of the twenty-minute penalty. In this respect, the Carrier says that if the parties had intended to provide an additional day's pay, such would have been written into the rule at the time it was amended. Thus, the Carrier says that the Organization is here attempting to acquire by award a payment which is clearly not provided for in the negotiated rule.

The Board does not find that the Carrier has offered probative evidence in its handling of the claims on the property to support that extraordinary circumstances had prevented it from allowing the Claimants a meal period within the prescribed time limits. That Carrier would offer that it was the result of 1) "the crews working an Amtrak assignment and the requirements of service," 2) "the workload at the piggyback ramp," or, 3) "this assignment works at the depot where complications imposed by the filming of movies, commercials, etc. interfered with observance of a timely meal period," do not, in this Board's opinion, show sufficient reason to support the existence of any unusual operating circumstance having prevented the Claimants from observing a timely meal period.

It is only in connection with the claim of Engine Foreman Saleem, et al, for May 19, 1979, in which the Board finds the record sufficient to hold that there was reason to defer a meal period. In this instance, the Claimants were assigned to a transfer job and, in keeping with application which the parties have given to Article 8, their meal period could be properly deferred until they returned to their home yard. That is precisely what happened. The transfer assignment kept the Claimants away from their home yard beyond the beginning of the seventh hour. Consequently, they were not afforded a meal period until after their return to the home yard, or, at a time permitted by the applicable rule.

For the same reasons expressed by this Board in its Award No. 24, and, further, in recognition of the fact that despite demands in contract negotiations for a more extreme penalty than the stated 20 minutes overtime pay when a meal period is not allowed within the designated time limes, that Article 8 was not so amended, the claims for a penalty day's pay must be denied. Therefore, except as concerns the claim of Engine Foreman Saleem et al, for May 19, 1979, it will be the Board's finding that the Claimants are not entitled to a day's pay, as claimed, but that they are entitled

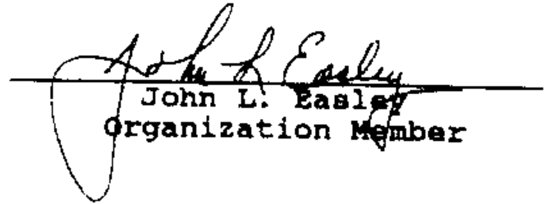
to an additional 20 minutes at the overtime rate of pay account of either, 1) not being allowed a meal period by the beginning of the seventh hour on duty, or, 2) not being allowed a meal period during their tour of duty. The claim of Engine Foreman Saleem, et al, is denied in its entirety.

AWARD:

Claims disposed of as set forth in the above Findings.

Robert E. Peterson, Chairman
and Neutral Member

William E. Meiries
Carrier Member



John L. Easley
Organization Member

Santa Ana, CA
April 30, 1989

PUBLIC LAW BOARD NO. 3257

PARTIES) UNITED TRANSPORTATION UNION (CT&Y)
TO)
DISPUTE) THE ATCHISON, TOPEKA & SANTA FE RWY. (COAST LINES)

STATEMENT OF CLAIM:

"Claim of Engine Foreman G. W. Norwood and Helpers A. M. Black and M. D. Contreras, Los Angeles Yard, for one day's pay each on account of not being allowed a meal period by the end of the seventh hour on November 11, 1978." (UTU File No. M-8-55; Carrier File No. 45-760-11)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The Claimant yard crew went on duty at 7:59 A.M. in Hobart Yard, and was required to work its entire tour of duty, nine hours and forty-six minutes, without a lunch period.

Article 8, Lunch Period, of the Schedule Agreement, as in effect at the time in question, read as follows:

"Section 1. Yard crews, herders, pilots and switchtenders will be allowed twenty (20) minutes for lunch between four and one-half (4-1/2) and six (6) hours after starting work, without deduction in pay. The lunch period will be given and completed within four and one-half and six hours.

Section 2. If crew is required to remain on duty over eight hours but not doubling through two shifts they will be entitled to a second lunch period within six hours after completing the first lunch period.

Section 3. Yardmen required to double through two shifts will be allowed a reasonable time to eat before starting second shift.

Section 4. Yardmen not allowed a lunch period within the time limit provided in Section 1 of this Article shall be paid an allowance of twenty (20) minutes at overtime rate and will be given lunch period as soon as possible before the end of the shift; this payment to be in addition to other earnings.

> Section 5. A yard crew working overtime on its own assignment, not doubling through on another assignment, will be paid an additional twenty (20) minutes if not allowed to complete a second meal period within six (6) hours from completion of the first meal period."

The Claimants were allowed 20 minutes additional compensation at the overtime rate of pay. The Organization claims that they are entitled to an additional day's pay pursuant to Article 2, Basic Day, for violation of Article 8.

The Organization makes extensive reference to past disputes on the property involving Article 8, supra, and conferences which it says it had with Carrier officials relative to purported abuses of employees being required to work past the prescribed time for a meal period. It says the Carrier officials had promised to correct such abuses of the rule, but that such abuse has not ceased. The Organization says that the 20 minute penalty built into Article 8 has proved inadequate; the Carrier is working the yard crews past the designated times and that, in addition, as in the instant claim, the Carrier is not permitting any meal period to be observed whatsoever during an entire tour of duty.

In support of its claim for a day's pay, the Organization makes reference to past settlements on the property and to awards of past boards of adjustment which have allowed compensation of a minimum day's pay in disposing of claims of a varied nature, i.e., Award Nos. 16887, 17600 and 18855 of the First Division, NRAB. It contends that the same theory of payment should apply in the instant case with respect to the meal period rule, asserting that the rule would be without purpose if no penalty is attached to a rule violation.

The Organization directs particular attention to Award Nos. 516 and 518 of PLB No. 912, UTU-N&WRWY, Referee Preston J. Moore, wherein the claims of yard crews for an additional eight hours account of their not being allowed a meal period were sustained. In this regard, it is noted that PLB No. 912 in its findings in Award No. 516 said:

> "There is no record that the claimants had any opportunity for a meal period except at the time they requested a meal period in the Union Pacific Yard. However, the evidence does indicate that the foreman did call the N&W regarding a meal period at the Union Pacific Yard.
>
> Under the circumstances herein there is no evidence that the crew had any opportunity to eat and did request permission to eat at a reasonable time. Therefore, the Board finds there was a willful violation of the Agreement by the Carrier and that the claimant crew was

required to perform service in violation of the Agreement. Under those circumstances the claimant crew is entitled to eight hours pay for performing service in violation of the Agreement. The Carrier is directed to pay the claimants eight hours less any time previously allowed for a meal period."

In Award No. 518 of PLB No. 912 it was held in part as follows:

> "The Board recognizes that there were reasonable excuses for refusing the crew the opportunity to eat at 11:00 p.m. and again at 1:00 a.m. However, the claimant crew was required to perform service in violation of the agreement, and under the circumstances herein it is the opinion of the Board that the claimant crew is entitled to a basic day's pay for such violation. The claim will be sustained for eight hours less any time previously allowed."

It is also to be noted that the Carrier Member dissented to the above findings of PLB No. 912 in both its Award Nos. 516 and 518. The dissent makes reference to what it claimed to be the historical practice to allow yardmen 20 minutes at pro rata rate of pay if not allowed an opportunity to take a meal period. The dissent also made reference to the Neutral Member of PLB No. 912 (Referee Moore) having previously recognized in Award No. 1 of PLB No. 386 (UTU-AT&SFRWY) that it has historically been recognized by many past boards of adjustment that the meal period rule is not a pay rule and that violations of the meal period rule do not entitle a grievant to payment of an additional day's pay.

In addition, the Organization has cited Award No. 21 of SBA No. 894 (BLE-CONRAIL, Referee Arthur W. Sempliner) and Award No. 23 of PLB No. 2160 (UTU-BNRWY, Referee Irving T. Bergman), as cases wherein claims for eight hours pay for not being allowed a meal period were sustained.

The Carrier does not deny that Claimant had not received a lunch period, but contends that there is nothing in the Schedule Agreement providing for the payment of an additional basic day's pay, or compensation beyond that 20-minute allowance at the overtime rate of pay which it has granted in application of Article 8.

The Carrier says that the very issue here in dispute was settled on the its property by the decision of PLB No. 386 in its Award No. 1 (Preston J. Moore, Referee). In this respect, the Carrier directs particular attention to the following findings of PLB No. 386 in its Award No. 1:

> "[The] Carrier relied upon Docket No. 174 of Train Service Board of Adjustment, First Division Award 9504 without a referee and First Division Award 18115. Other awards supporting their position are First Division

Awards 8208, 8609, 8610, 8611, 8612 and 11053, all of which were rendered without a referee and denied the claim for compensation when the meal period was not taken. Awards 269 and 270, Special Board of Adjustment No. 127 also support the position of the Carrier. We further believe that recent Award No. 1 of Public Law Board No. 493 supports the position of Carrier wherein it denied a day's pay, although the rule was not similar we believe that the principle is similar. All of the awards cited by the Carrier basically hold that the 'meal period rule' is not a pay rule and does not contain a provision for payment in lieu of permitting the employe lunch period. This Board must agree with the latter awards. ... The Organization and the Carrier have for many years agreed upon the amount of damages in many instances where the agreement was violated. They have not done so in this case on this property. This agreement has been in effect for many years. This issue is not a new one and apparently for the first time came to a dispute in 1961 in the present claims.

Many awards have held that this Board does not have the powers of equity and is without the power to write rules or agreements for the parties. There are instances where violation of the agreement entitled the claimant to a day's pay but the violation of this agreement does not, by the agreement, entitle the claimant to such payment. We do not believe it is the prerogative of this Board to determine the payment under such violation. If the Board would have that authority, it would be necessary for the Organization to prove a measure of damage. This, the Organization has failed to do; therefore, we have no authority to assess damages. We believe that the parties must pursue their rights under Section 6 of the Railway Labor Act; therefore, the claim will be denied."

The Carrier also points to Award No. 82 of PLB No. 38, BLE-GTWRR, Referee Paul D. Hanlon, as being on all fours with the instant case. In that award, the board's findings were as follows:

"Claimant requests eight hours at straight time yard rate as a penalty for carrier not allowing his lunch period to commence until after he had been on duty six hours and fifteen minutes, which is admittedly in violation of the requirements of Article 21. No specific penalty is provided in the Agreement for violation of Article 21 and under established past practice, the penalty is twenty minutes at straight time yard rate, which has already been allowed by the carrier in this case. The organization is no longer satisfied with this twenty-minute penalty payment, but if the practice is to be changed and a new specific penalty of eight hours

established, that will have to be accomplished through a Section 6 Notice, since it is clearly outside the authority of this Board to change the Agreement provisions and practices of the parties."

The Carrier also directs particular attention to Award No. 31 of PLB No. 308, UTU-RF&PRR, Referee Nicholas H. Zumas, wherein that PLB, in the claim of a yard crew for one day's pay after not being granted a second meal period within six hours after they had completed their first meal period, held a Carrier offer to pay the claimants 20 minutes at the overtime rate of pay to be equitable under the circumstances and, further, noted that there is no provision in the agreement which would require the Carrier to pay one day's pay for a violation of the meal period rule in effect on the property.

The Carrier further says: "It was not denied claimants did not observe a meal period due in part to heavy backlog of business. It was neither alleged nor was it the case that claimants made a request to eat with such request having been denied. It is not Carrier's intent to prevent employes from observing a timely 20 minute meal period ... This claim resulted in part through an oversight on the part of the yardmaster. Also, claim was brought about in large part due to the laxity or negligence on the part of claimants in not apprising the yardmaster of the fact a meal period was due to be taken. The language 'allowed' presupposes a request. Claimants cannot, as in the case involved herein, fail to request a meal period and then claim they were not 'allowed' a meal period."

In this latter regard, the Carrier points to Award No. 15 of PLB No. 1764, UTU-KCSTRWY, Referee Tedford E. Schoonover, as support for its contention. However, in the case before PLB No. 1764 it is evident that there was a practice on the property which gave reason for that Board to hold: "Use of the word 'allowed' implies the crew has the option to take lunch within the prescribed period and will not work beyond the permissible period unless 'required' to do so by higher authority."

There is no indication of record that the practice above referred to in Award No. 15 of PLB No. 1764 prevailed with respect to application of Article 8 in the instant claim. Nor does the record show that the Carrier arguments, as above, relative to backlogs of work, laxity or negligence on the part of Claimants, had been made a part of the record in the handling of the claim on the property. Rather, the exhibits show that the Carrier had recognized in its letter of denial that it had been experiencing an internal managerial problem as concerned the basis for Claimants not having been permitted a meal period. Further, this letter shows that the Carrier had advised the Organization that it is not the intent of the Carrier to prevent its employees from observing the designated 20-minute meal period, and that "the matter has been handled on a corrective basis."

Whatever may have been the responsibility of the Claimants for either requesting or observing a meal period, it is clear from the record that the Carrier had assumed a responsibility for not having provided Claimants benefit of a meal period.

There is no question that a number of awards of past boards of adjustment have allowed a minimum day's pay as compensation for various violations of rules where grievants were, for example, required to perform work beyond the scope of their assignment, deprived of work, inducted into foreign service, and, in a few instances, for the failure of grievants to have been provided a meal period. However, it is evident that the vast majority of the awards cited, and, in particular, Award No. 1 of PLB No. 386 on this very property, have held that the meal period rule is not a pay rule which entitles a grievant to a penalty day's pay for a violation. In this latter regard, it is especially noted that, among the awards cited to the Board by the Carrier, Award No. 1 of PLB No. 493, UTU-SPRR, Referee A. Langley Coffey, in denying claims for a day's pay account of the grievants not having been allowed a meal period during their shift, held that they be paid an additional 20 minutes at the overtime rate. In doing so, PLB No. 493, in a "Referee's Opinion" or concurring statement to the award, said, among other things, the following:

> "I see, in the Rule, a bargain that Switchmen will be allowed 20 minutes for meal which shall not be before they are ready (4-1/2 hours after starting work) nor longer than 6 hours after starting work, without their consent. The spread between 4-1/2 and 6 hours is a liberal concession on the part of the Employes. If, on occasions, Carrier's operating officers want or need a larger spread it is available as an additional concession but at a price.
>
> The Employes agree to accept an arbitrary payment of 20 minutes at the straight time rate, etc., plus a guarantee, in a manner of speaking, that they will be put to meal not later than six hours and forty minutes. When the Rule was negotiated, neither party apparently believed the 'guarantee' would not be kept, so the need was not present to press for more. The parties had agreed, however, on an arbitrary payment for a delay in the regularly assigned meal period and the Employes should not be held to take less, in my opinion, when their deferred meal period assignment was delayed.
>
> I believe the Employes are sincere when they say they want to be put to their meal at a decent hour during their normal tour of duty and, therefore, are claiming the additional day's pay as a deterrent, which Carrier is known to respect and recognize, and not to gain a substantial increase in their earnings for that day.

> I see little difference between a mid-day meal that is delayed until near the end of 8 hours on duty and one denied. It seems to me that an early quit or overtime earned on such day, if the earlier quit is denied, is more desirable. Accordingly, it is my view that the ends to be attained can be attained closer to the bargain which the parties have made. For this reason, I have concluded that Switchmen, who have been on duty without a meal to commence not latter than six hours and forty minutes on that day, have completed their yard day on continuous time at the end of 7 hours and 20 minutes after starting work that day, and will thereafter earn overtime on such day if not given what otherwise would be an early quit. A second arbitrary allowance of 20 minutes pay at the straight time rate, as a 'guarantee', should be granted also."

This Board endorses the rationale of PLB No. 493 in the above award. Accordingly, we will find that just as the Claimants in the instant dispute were entitled to 20 minutes overtime when not allowed a meal period within the time prescribed by the Section 4 of Article 8, the Claimants are entitled to a like amount of compensation, 20 minutes at the overtime rate of pay, account of their not having thereafter been allowed a meal period before the end of their shift.

AWARD:

Claim disposed of as set forth in the above Findings.

Robert E. Peterson, Chairman
and Neutral Member

William E. Meiries
Carrier Member

John L. Easley
Organization Member

Santa Ana, CA
April 30, 1989

Gene L. Shire
General Director
Labor Relations

BNSF Railway Company
P.O. Box 961030
Fort Worth, TX 76161-0030
2600 Lou Menk Drive
Fort Worth, TX 76161-0030
817-352-1076
817-352-7482
gene.shire@BNSF.com

September 1, 2005

Mr. W.E. Young
General Chairman UTU
12465 Mills Ave.
Suite B-5
Chino, CA 91710

Dear Mr. Young,

This refers to our formal conference held in Houston, Texas during the week of August 1, 2005 wherein we discussed the proper handling of meal period claims in yard service.

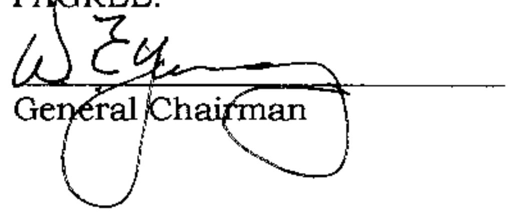
We agreed that Article 8 of the current agreement provides that yardmen are entitled to a 20 minute meal period between 4 ½ and six hours. If this first meal period is not allowed, the yardman is entitled to payment of 6 miles. The yardman then should be afforded a meal period to be started no later than the beginning of the 7th hour. If this meal period is likewise not afforded, the yardman is entitled to payment of an additional 6 miles. At this point, the yardman must specifically request a meal period. If the meal period is denied, the yardman must identify when the meal period was requested and the name of the individual who denied the request. Then, if the yardman is not afforded a meal period to commence before the beginning of the 10th hour, and additional 50 miles shall be allowed. In addition, in the event BNSF disputes the information provided by the yardman, the declination must identify who either granted a request for a meal period or instructed the yardman to observe a meal period, when the request/instruction occurred, and the site of the eating location.

It was further understood that yardmen making claim under this provision must show that an appropriate eating location was available within the identified time parameters. We agreed that a "proper eating location" would be a location that contemplates a lunchroom, restaurant or other location that allows the crew to get off the locomotive, sit down and consume a meal, including, but not limited to, the on/off duty location. Notwithstanding the foregoing, yardmen on duty for 10 hours or more, who have not been afforded a meal period, shall be allowed a meal period as soon as operationally possible upon arrival at the on/off duty location.

If the foregoing accurately reflects our understanding, please affix your signature in the space provided on copy of this letter, and return a fully executed copy to the undersigned.

Sincerely,

I AGREE:



General Chairman