

PUBLIC LAW BOARD NO. 6003

**Award No. 53
Case No. 77**

Parties to Dispute: (**UNITED TRANSPORTATION UNION**
(
(
(
(
(**-and-**
(
(
(
(**BURLINGTON NORTHERN SANTA FE RAILWAY**
(

Statement of Claim: Multiple claims seeking various payments for denial or delay of meal periods by claimants situated in Oklahoma City, Tulsa, Springfield and St. Louis, Missouri; Carrier File Nos. CTG-97-11-21AR; CTG-98-04-02AC; CTG-98-04-23AB; CTG-98-08-14AA, CTG 98-10-05AA; CTG-98-04-03AJ; CTG 98-04-21AJ; CTG 98-04-21AN; Organization File Nos. C-3507; C-3633; C-3655; C-3690; C-3695.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated April 1, 1997 (the "PLB Agreement"), and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

The Board finds that this case is not so much one of disputed contract interpretation as it is one of establishing the appropriate remedy for contract violations. There is no dispute that Article 12 requires a meal, and that such meal must be given and completed between 4 ½ and six hours on duty. The claims before the Board involved times when a meal was provided, but was not completed within the six-hour limit, and other times when no meal period was allowed. Additionally, in one case a yard crew at Oklahoma City, Oklahoma was told that they could not return to the yard office for their meal period. The claimants argue that they were required to eat their lunch on the locomotive, while the Carrier argues that no specific instructions to that effect were given. Instead, the Carrier asserts that other facilities were available and had been used by the same crew previously. The record indicates that other tribunals on this property have allowed 20 minutes at straight time rate as the universal penalty, regardless of the specific facts. One such decision included a recommendation that if such violations continued, a greater penalty (four hours pay) should be imposed

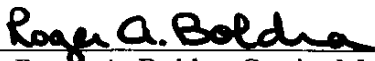
This Board concurs with the findings of the previous boards that the agreement rule requires a 20 minute meal period, to be given and completed between 4 ½ and six hours on duty. As to the appropriate penalty, we concur with the previous boards that 20 minutes at straight time rate should be allowed instances where a meal period is provided, but not completed within the six-hour limit contained in Article 12. The meal period should not be delayed beyond the six-hour limit except where some bona fide operational impediment exists

which would justify the delay, or where the delay is unavoidable due to unforeseen circumstances.

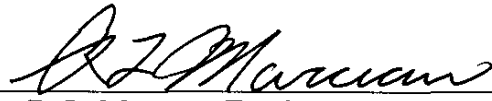
In the cases where no meal at all was allowed, we will allow 4 hours pay as a penalty. There is nothing in the record which would justify the complete denial of the meal period for the entire shift, and we believe that a greater penalty is warranted in these circumstances. As to the Oklahoma City claims, the record is insufficient to determine whether alternative facilities were available so that taking the meal on the locomotive could have been avoided. We will therefore dismiss those claims without prejudice to either party's position.

AWARD

The claims are to be resolved in accordance with the Findings and Award, above.



Roger A. Boldra, Carrier Member



R. L. Marceau, Employee Member



Jonathan I. Klein, Neutral Member

This Award issued the 3rd day of April, 2000.