PUBLIC LAW BOARD NO. 1302

PARTIES TO DISPUTE) NORFOLK AND WESTERN RAILWAY COMPANY

UNITED TRANSPORTATION UNION (E)

STATEMENT OF CLAIM: Claim of Moberly Division Engineer H. E. Forth for one (1) hour at punitive rate account of denied a second meal period on January 4, 5, 6, 7, 11, 12, 14, 18, 19, 20, 21, 22, 25, 26, 27 and 28, 1971. Also claim for September 20, 1971, October 5, 6, 13, 14, 7, 11, 12, 18, 19, 20, 21, 27 and 29, 1971. Also Claim for October 25, 28, 26, 1971, November 1, 2, 5, 8, 9, 15, 16, 17, 18, 19, 22, 23, 24, 29, 30 and December 1, 2, 3, 6, 7, 8, 9, 10, 14, 15, 16 and 17, 1971.

FINDINGS: This Public Law Board No. 1302 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

After the Hours of Service Act limited the time on duty to fourteen hours Carrier ceased permitting Claimants to take a second meal period during their tour of duty. Carrier believes that it is under no obligation to provide the second meal period because the time on duty following it would be too short. Rule 27, Section 8 reads:

> "Sec. 8. Engine crews on freight trains will be allowed a reasonable time for eating, at convenient places, but must notify the dispatcher as much in advance as possible when they expect to do so."

The switch locals to which Claimants were assigned were road assignments but the work was similar to yard work, i.e., switching box cars, spotting cars for industries, etc. The road rule does not provide a fixed time limit by which Carrier must provide a meal period, as the yard rule does. Under the yard rule an Engineer may not be required to work more than six hours without a meal period. The rule applicable here permits more flexibility for obvious reasons and requires a case by case application of the words "reasonable time." What is common to both rules is the right of the Engineer to a meal period. The rule before the Board requires Carrier to grant time for eating by the use of the word "will." What is left to case by case determination is "a reasonable time" and "at convenient places." Obviously the character of the service and operating factors and conditions must be considered as to time and place. Here the service was akin to yard service and Carrier has not cited any operating problems which prevented it from providing a meal period.

Under the particular facts and circumstances present in this case which does not involve through freight trains, a meal period should have been allowed so that Claimants were not required to work longer than six hours without a meal.

Carrier argues that since the rule does not provide a penalty it would be wrong for the Board to award damages. It supports its argument with citation from awards on this property which so held. Of course, this Board should give great weight to prior awards on the property. Unless they are wrong, their holdings should be applie in future cases. When the Board does not agree that the prior award is correct it is not bound to follow it. That is the situation here. Many sections of the Agreement do not specify the damages to be awarded but both the NRAB and Public Law Boards regularly provide damages for a breach. The argument that damages are to be awarded only when a specific amount is set out in the Agreement is not valid. A claim that the Agreement was violated which the Board finds to be meritorious may result in an award of money damages irrespective of whether the Agreement provides for a fixed amount for the particular breach.

AWARD: Claim sustained for each instance in which Claimant was required to work longer than six hours without being allowed a meal period. Carrier is directed to make payment on or before thirty (30) days from the date of this Award.

W. M. Edgett, Chairman

M. A. Ross, Organization Member

R. L. Prange dissenting
R. L. Prange, Carrier Member

St. Louis, Missouri
April 7, 1976