

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12400  
Docket No. 12135  
92-2-90-2-280

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU  
(CSX Transportation, Inc.  
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the service rights of Carman J. Roark (hereinafter "claimant") and the provisions of Rule 7 of the controlling Shop Crafts Agreement were violated when on August 10, 1989 Carman Roark was required to attend a mandatory Wheel class required by the carrier, two hours after his regular shift. The claimant was only paid straight time in violation of the aforementioned Rules.

2. Accordingly, the claimant is entitled to be compensated for two (2) hours pay at the applicable Carmen's half time rate for his attendance on August 10, 1989.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The Carrier owns and operates the Fulton Yard, a facility at Richmond, Virginia, where cars are repaired and classified.

On August 10, 1989 the Carrier required the Claimant a Carman, to remain at the Fulton Yard for two hours after the end of his regular shift to attend a mandatory training class on "Identifying and Gauging Wheel Defects." After attending the class, the Carrier compensated the Claimant for two hours at the straight time rate. With the filing of the instant claim, the Organization seeks payment for the difference between the straight time and the overtime rate.

It should be pointed out that the instant claim is among several claims filed by the Carmen at the Carrier's facility at Richmond, Virginia. The claims are being held in abeyance subject to the resolution of the instant claim.

During the handling on the property, the only Rule which was claimed to be violated by the Organization was Rule 7(a). Indeed, the instant claim submitted by the Organization refers solely to the violation of the provisions of Rule 7. Accordingly, the instant dispute involves a controversy over the interpretation and application of Rule 7(a) which provides as follows:

"For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. For forty minutes or less continuous service after bulletin hours; one hour straight time will be allowed."

The central inquiry to be addressed is whether the Claimant performed "continuous service after regular working hours" within the intent and meaning of Rule 7(a). The word "service" cannot be severed from the "continuous," the word which precedes it. Thus, the parties contemplated unbroken "service" after regular working hours.

In this Board's judgment, clearly, the phrase "continuous service after regular working hours" contemplates "work of the type" that is "continuous" and to which the Claimant is regularly assigned. See, e.g., Third Division Award 134. In other words, the word "service" in Rule 7(a) is synonymous with "work." Attendance at a training class is not work or service of the type to which the Claimant is regularly assigned.

In a previous decision involving the same parties, this Board denied the Organization's claim that the overtime rate be paid to a claimant who was among 800 employees that were required to take an annual audiometric hearing test conducted by the Carrier either during the hour before or after their regular shift. Second Division Award 12234. As in the instant dispute the Carrier asserted that its payment of the straight time rate for one hour was gratuitous and not required by the scheduled Rules and Agreements. The instant dispute (as well as the dispute in Second Division Award 12234) does not involve the issue of whether the Carrier is required under the Agreement to compensate the Claimant for attendance at a training class (or, as in Second Division Award 12234, taking an audiometric hearing test).

Among the Rules that the Carrier claimed were violated in Second Division Award 12234 were Rule 7(a), and 7(d) which refers to the payment of the overtime rate "for services performed continuously in advance of the regular working period." Thus Rules 7(a) and (d) provide for the overtime rate to be paid for continuous service after and before the regular working period. As the Board declared in Second Division Award 12234 with emphasis given to Rule 7 "We read Rules 6 and 7 to apply only when the employee is actually performing work or service." This Board is of the opinion that attendance at a training class is similar to the taking of a hearing test in the sense that both activities do not constitute service or work which are normally performed during the Claimant's regular working hours.

The Organization contends that since the Carrier required attendance at the training class on August 10, 1989 the Claimant would have been disciplined had he failed to attend the class. Thus, according to the Organization the Carrier is required to pay the Claimant the overtime rate. On the basis of the record, the issue before the Board does not encompass the question of whether or not the Carrier has the right under the Agreement to direct to the Claimant to attend a training class. The issue before the Board concerns the application of Rule 7(a) which requires the payment of overtime under the specified conditions contained therein. See, e.g., Second Division Award 12234.

The Organization also claims that failure by employees to attend the training class "would not place the Carrier or employee in a position of not being able to perform his/her job properly." The standard utilized by the Organization if enforced, would seriously impede progress in just about every facet of the industrial work place. The force that drives industry is simply "to do it better." In any event, in Award 28 of PLB No. 3445, the Board stated the following:

"Therefore, it is not merely for Carrier's benefit that the classes are held, for without the classes employees would be uninstructed in the operating rules in violation of Federal law. We agree with those awards cited by Carrier holding that the attendance of rules classes serves a mutually beneficial purpose. Having determined that both parties benefit from the classes in question, we further find that, absent specific contractual mandates, compensation is not required for attendance of such classes. \* \* \* As stated earlier, since these classes are beneficially instructive to Claimants, we do not find them to constitute 'work' as contemplated by the Agreement."

The training class held on August 10, 1989 covered the subject of "Identifying and Gauging Wheel Defects." Training which enables the employees to improve the manner in which they perform their duties is beneficial to them. The detection of wheel defects is a critical aspect of a carman's skills. Attendance at such classes serves a "mutually beneficial purpose." Inasmuch as the training class was beneficially instructive to the Claimant, the Board finds that attendance at the class does not constitute "service" within the intent and meaning of Rule 7(a).

Finally, the Organization refers to a previous dispute on the property which occurred in October, 1989 when the Carrier attempted to make voluntary classes "mandatory" without proper compensation. It is sufficient to state that Rule 7(a) cannot be construed to imply that mandatory classes constitutes "service" but voluntary attendance at such a class is not "service." The nature and characteristics of the training class are the same whether attendance is voluntary or mandatory.

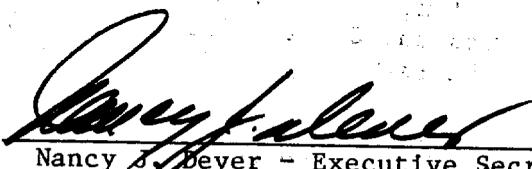
The Board has carefully examined the record and concludes that the Claimant's attendance at the training class held on August 10, 1989 was not "continuous service after regular working hours" within the intent and meaning of Rule 7(a). Accordingly, the claim for the difference between the straight time and the overtime rate is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of August 1992.