Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13707
Docket No. 13618
03-2-01-2-22

The Second Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Burlington Northern Santa Fe Railway

STATEMENT OF CLAIM:

"1. That in violation of the controlling Agreement, Electronic Technician K. A. Huff of Alliance, Nebraska was not compensated the differential rate of sixty-five cents (.65) per hour for forty (40) as outlined in the national Skill Study Agreement effective February 1, 1994.

2. That accordingly the Burlington Northern/Santa Fe Railroad Company should be directed to compensate Electronic Technician K. A. Huff as outlined in the National Skill Differential Agreement for forty (40) hours of skill differential compensation."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant is employed at the Carrier's Alliance, Nebraska, facility as an Electronic Technician, and pertinent to this dispute, the Claimant is compensated on a monthly basis. During the week of July 27, 1998, the Claimant attended a Carrier sponsored training class at Overland Park, Kansas, for which he was paid for 40 hours at straight time.

On August 19, 1998 the Organization submitted a claim on behalf of Huff stating that:

> "During the weeks of July 27 through July 31, 1998, Mr. Huff attended JCCC. After returning to Alliance, NE and receiving his first half of August paycheck, he discovered it to be shorted the Skill Differential pay for those five days while attending training. Mr. Huff was at training with a FCC license making adjustments on electronic equipment as set down in paragraph 4 of the letter dated December 20, 1993 and signed by Mr. N. Schwitalla and Mr. R. F. Allen. The letter dated November 26, 1997 signed by Mr. Eldon Puett for F. M. Gratke re-emphasized that attending technical training will be paid. Again Mr. Puett re-confirmed this in a letter dated January 19, 1998.
>
> Mr. Huff is entitled to the Skill Differential pay of 0.65 per hour for the forty hours. Please adjust and advice (sic)."

The Carrier premised its denial on the following:

> "While past practices and letters of instructions have provided for the skills differential rate while attending training, our most recent ruling from Labor Relations is that all time spent in training programs does not qualify for the skills differential rate. No Public Board award has ever found in favor of paying the skills differential rate for time attending training. Your claim must therefore be declined in its entirety."

In a reply to the Carrier's denial, the General Chairman reiterated his position and further asserted that the skill differential has been paid to Electronic Technicians for attending school "since the effective date of the Agreement." The General Chairman went on to assert that:

> "The Carrier has not, prior to the date of this claim, contacted the Organization to discuss a change in the application of the rule, or has the Carrier even notified the undersigned of its intent to change the application of the rule."

The Parties were unable to resolve the issue and it was placed before the Board for adjudication.

Section 4 of the December 20, 1993 Letter Agreement, upon which the Organization relied, provides that:

> "Communications electronic technicians (or equivalent maintainers) with a valid FCC license (or equivalent) who regularly performs repairs and

adjustments on electronic equipment shall receive a differential of 50 cents per hour for all hours worked."

The "Agreed Upon Guidelines for Administration of Letter Agreement Differentials" states:

> "NOTE: The Section 4 differential is payable on the basis of all hours worked. An employee covered by that provision who is compensated on a monthly basis shall be paid such differential for those hours on which service is actually performed."

The Organization asserts that the Claimant's attendance at the training class conforms to the dictionary definition of the term "work," however, numerous Board Awards have held that attendance at training classes does not constitute "work" or "service" as those two terms are used in the labor agreements noted supra. (See for example Second Division Awards 7370, 12367 and 13322). In that connection, the Organization notes that part of the training now in dispute was hands-on training such as adjustments to equipment, and that said training sufficiently differentiates those training activities from other types of training and therefore constitutes "work." However, we do not concur. The fact that the Claimant made equipment adjustments in a classroom training setting does not alter the fact that, for purposes of the Agreed Upon Guidelines for Administration of Letter Agreement Differentials" his activities during the time in question constituted "training" and did not constitute "hours worked" or "service"under the cited NRAB precedent decisions.

Primarily, the Organization cites past practice in support of its position. It is now well settled that, absent very clear and explicit contract language barring such evidence, "past practice" is admissible and may be relied upon by an arbitrator in determining the mutual intent of the Parties under an ambiguous or silent written collective bargaining Agreement. Indeed, Elkouri & Elkouri observed that the use of "past practice" to give meaning to ambiguous contract language is so common that no citation of arbitrable authority is necessary. How Arbitration Works, Fourth Edition, 1984, page 451.

Given the above-cited Second Division authorities, however, the requisite ambiguity concerning whether the Claimant was "working" when he was in "training"is not demonstrated on this record. Moreover, the Party urging a dispositive custom or practice has the overall burden of proving the existence of a binding "past practice." It is generally recognized that 'past practice' to be binding on both Parties, must be 1) unequivocal; 2) clearly enunciated and acted upon; and 3) readily ascertainable over a reasonable period of time as a fixed, mutual and established practice of both Parties. In this case, it is not disputed that the Carrier included the differential pay in compensation for attendance at training classes for approximately four years. But there is no evidence whatsoever of the mutuality which must be shown to establish that this was a

contractually enforceable "past practice," rather than simply a management policy. Public Law Board No. 3139, Award 175, cited and relied upon by the Organization is clearly distinguishable on these facts and circumstances.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 31st day of January, 2003.