Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8726
SECOND DIVISION Docket No. 8579
2-SPT-CM-'81

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Southern Pacific Transportation Company

Dispute: Claim of Employes:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling agreement particularly Rules 1 and 4, when they denied the below named carmen the overtime rate while attending Body Mechanics' School before or after their regular tour of duty.

2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to compensate the following carmen the difference between the straight time rate they were paid and the overtime rate they were entitled to receive, or a total of one hour (1') each at the pro rata rate for the date listed next to their name:

July 1, 1977	7 A.M. to 9 A.M.	S. Garza, Jr. N. A. Rivera P. L. Springer V. T. Brown
	3 P.M. to 5 P.M.	A. Brown C. A. Kimbrell L. R. Suarez
July 5, 1977	7 A.M. to 9 A.M.	B. Boyce L. Mann W. Williams
	3 P.M. to 5 P.M.	David Zindler H. Mendoza, Jr. F. G. Adams B. Simpson M. Alvarado J. D. Middleton
July 6, 1977	7 A.M. to 9 A.M.	A. J. Miller
	3 P.M. to 5 P.M.	R. C. Vickroy A. B. Whitcher E. B. Adams J. Broussard A. Meane
July 7, 1977	7 A.M. to 9 A.M.	C. T. Lucas J. B. Harris T. Salazar H. C. Shitaker

	3 P.M. to 5 P.M.	A. F. Luce R. N. Doty L. Jernison E. E. Petty
July 8, 1977	3 P.M. to 5 P.M.	B. S. Martinez S. G. Perossa
July 13, 1977	3 P.M. to 5 P.M.	R. B. Reid F. T. Ramirez G. S. Harvey H. Flores
July 14, 1977	7 A.M. to 9 A.M.	J. Osborne C. P. Skinner W. V. Calhoun
	3 P.M. to 5 P.M.	G. Rideout J. W. Batta J. L. Frederick
July 15, 1977	7 A.M. to 9 A.M.	C. R. Rinehart G. M. Duncan
July 20, 1977	11 P.M. to 1 A.M.	J. L. Escarino

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 employe 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 forty-five named claimants in this case were instructed by the Carrier to attend a class on Body Mechanics, which class was designed to instruct employees on how to work safely and prevent injury to their backs. The class was held on various dates in the month of July, 1977. All of the claimants were instructed by their immediate supervisors to attend a specific class either prior to the start of their shift or immediately after the end of their shift. Each claimant was paid for attendance at the class at the pro-rata rate of pay.

The Organization contends that Rule 1 of the Agreement is clear that a day's work shall consist of eight hours only, and therefore, any service performed by an employee beyond eight hours comes within the confines of Rule 4, and is thus entitled to payment of the overtime rate of pay. The Organization contends that

Rule 4 is clear as to meaning and intent when it outlines that employees working in excess of their regularly assigned hours will be paid at the overtime rate. The Organization contends that it has been past practice to pay overtime for attending classes and in the instant case, overtime was paid to other crafts, including the UTU. The Organization contends that Management had initially informed the employees in question that they would be paid at the overtime rate.

The Carrier contends that a long line of awards have held that time spent attending safety classes is not "work;" and rules applicable to pay for "work" cannot be used as a basis of pay for time spent at classes. The Carrier contends that there is no rule in the Carmen's Agreement which provides for overtime pay for attending safety classes. The Carrier states that no "past practice" supports the Organization's position. The Carrier denies that any responsible officer advised that employees would be paid at the overtime rate and even if a supervisor incorrectly advised such, this would not bind the Carrier to make an incorrect payment.

The classes on Body Mechanics were safety classes. We agree with the analysis of Referee Joseph A. Sickles contained in Third Division Award 20323:

> "In Award 10808 (Moore), it was noted that there are exceptions to time consumed by an employee when directed by the Carrier as being considered 'work' or 'service'. One of those exceptions was held to be where the circumstance contains a mutuality of interest. The Award concluded that, 'Awards have held that classes on operating rules and safety rules are such exceptions.' See also, Award 11048 (Dolnick), 15630 (McGovern), Fourth Division Awards 2385 and 2390 (Seidenberg), 7631 (Smith), 11567 (Sempliner) and Public Law Board No. 194, Awards 24 and 25.
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> The Board does not mean to suggest that the issue in dispute is so clear of resolution that reasonable minds might not differ in determining the appropriate application of the Agreement to the facts presented in this dispute. Nevertheless, numerous Awards rendered by a number of Referees have consistently determined that mandatory attendance at classes such as those in issue in this dispute, do not constitute 'work, time or service' so as to require compensation under the various Agreements. Because of the consistent holdings of prior Referees, we are reluctant to overturn the multitude of Awards."

We find that the Organization has not met its burden of proof that a "past practice" existed of paying Carmen at the overtime rate of pay for safety classes. While the evidence indicates that Switchmen were paid differently than the Carmen in question, such employees are covered by a different Agreement, and Rule 85 of the Switchmen's Agreement has a specific rule dealing with classes on safety, etc., which requires a minimum of four hours' pay. The Carmen have no such similar rule. We find that the fact that Switchmen were paid under a specific rule is not evidence that a "past practice" existed for Carmen or all Carrier

employees to be paid at the overtime rate for attending safety classes. We find that while certain Carrier officers may have incorrectly stated that the claimants would be paid the overtime rate, such does not bind the Carrier under the narrow facts and circumstances of this case (please see Third Division Award 20323). We are compelled to deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of June, 1981.