

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Chicago, South Shore and South Bend Railroad Company

Dispute: Claim of Employees:

1. The Chicago, South Shore and South Bend Railroad ordered the following employees, A. Baker, S. Baron, J. Gardner, R. Humelsheim, R. Keppen, R. Krassow, M. Kehoe, J. Lamm, R. Scissom, R. Van Ooteghem and L. Wanke, to attend one of two classes held on May 11, 1978, on their off duty time. The employees attended the classes and the Carrier has refused to compensate said employees for this service in violation of Agreement Rules 3, 5 and 39.
2. The above named employees, hereinafter referred to as Claimants, are requesting four (4) hours pay each at the pro rata rate pay for the time they were required to be in attendance at the Book of Rules Classes held on May 11, 1978.

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 employees 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.

Claimants were directed to attend a "Book of Rules Examination" on May 11, 1978, outside of their regularly assigned working hours. They did so, and they did not receive compensation for the time involved.

The Organization argues that the Claimants should be paid for the time involved, referring particularly to Rule 3, in reference to "work performed" in excess of forty hours in any work week, and Rule 5, which reads in relevant part as follows:

"Overtime Outside Bulletined Hours

Employes called or required to report for work and reporting will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less, and will be required to render only such service as called for ..."

Reference is also made to Rule 39 which states that, "All reports required by the company are to be made during working hours."

The Board finds that the taking of a rules book examination is substantially different from making a "report", and thus Rule is not supportive.

The question remains as to whether the rules book examination is necessarily considered "work" as defined in Rules 3 and 5. The Board finds no basis to support this view. The Carrier points out that in the past such examinations have been given outside of normally assigned hours and without compensation to the employees; the Organization argues that there have been instances when employees were paid but offers no specifics. To resolve the possible ambiguity of the definition of "work", the unrefuted contention of the Carrier as to established practice must be given weight.

Further, this issue has been the subject of numerous previous awards. Indicative of such awards is Third Division Award No. 20323 (Sickles) which states in part:

"In Third Division 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.

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."

The ascertaining that employes are knowledgeable of rules serves at least two purposes: it assures the Carrier of having competent and trained employes, and it assures the employe that he is prepared to perform his duties as required. The "mutuality of interest" is clear.

There is no rule in this instance covering time spent in rules examination, the Board having found that Rule 39 is not applicable. Established practice and the testing of the same question in numerous other awards leaves no basis for the Board to find such payment is required. Finally, the issue here is

Form 1
Page 3

Award No. 8987
Docket No. 8461
2-CSS&SB-CM-'82

quite different from that covered in Award No. 8986 and Award No. 8988 in which the time spent in training was in place of regularly assigned work in which the employees would otherwise have been engaged.


A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of March, 1982.