Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11040
SECOND DIVISION Docket No. 10591
2-CR-MA-'86

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace (Workers
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(Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That the Consolidated Rail Corporation violated the Controlling Agreement, particularly Rule 8-K-1 of the Agreement entered into by and between the Consolidated Rail Corporation and the International Association of Machinists and Aerospace Workers dated May 1, 1979 when they allowed the Claimants to attend training sessions in the Conrail Training Center located in the Juniata Locomotive Shops after their normal working hours.

2. That accordingly, the Consolidated Rail Corporation be ordered to compensate B. Gathagan, W. V. Wargo, G. F. Winters and R. G. Turner in the amount of eight (8) hours for the following days: April 27,28,29,30, 1981, and J. A. Trexler in the amount of 7.5 hours for the following days: April 7, 16, 21, 23, 1981.

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.

Initially, in its Submission, the Organization has withdrawn its Claim for compensation for Claimants Winters and Trexler. Therefore, this Award will be read consistent with that withdrawal.

Claimants are employed by the Carrier in the Juniata Locomotive Shops, Juniata, Altoona, Pennsylvania, on the first shift, (7:00 A.M. to 3:30 P.M.) as Machinists Grade "E". On April 27, 28, 29, and 30, 1981 Claimants attended basic General Electric Mechanic Classes in the Juniata Locomotive Shops Training Center. The classes were held for two hours on each of those dates and were held after the completion of the Claimants tour of duty. The record indicates that the training classes were offered, in part, as a result of Federal and State grants for the retraining of Machinists, Electricians and other workers and specifically for training in maintenance of General Electric diesel engines at the Juniata Locomotive Shops. The Carrier had previously transferred and consolidated its locomotive repair work from Ohio to the Juniata Shops.

The Organization asserts that the Claimants are entitled to two hours' pay at the straight time rate for each of the days Claimants attended the classes relying upon Rule 8-K-1(a) of the Controlling Agreement. The Carrier does not dispute the number of days or hours for those Claimants whose Claim for compensation has not been withdrawn by the Organization. However, the Carrier contends that no payment is required since the training sessions were not related to the Claimants assigned duties on their regular positions; the Carrier did not require the Claimants to attend the training classes, but the Claimants did so on a voluntary basis in order to learn new skills and increase their opportunity for advancement; and that a long standing practice has existed wherein employees are not compensated for voluntary attendance at such training classes attended outside of a regular tour of duty whether or not such training was or was not related to an employee's position.

Rule 8-K-1(a) states:

> "Employees will be paid at the straight time rate of pay for time attending related training sessions held during or outside of regular work hours."

Initially, we must reject the Carrier's position that no compensation can be given under Rule 8-K-1(a) where the employee voluntarily, and without direction from the Carrier, attends a related training session. There is no language in Rule 8-K-1(a) that supports such a position. The Rule specifically states that employees "will be paid . . . for time attending related training sessions . . . " No condition concerning "required" attendance can be found in the Rule. See Second Division Award No. 10416:

> ". . . the agreement contains no language that indicates that the Carrier must expressly and affirmatively require an employee to attend a training session in order for that employee to qualify for compensation under Rule 8-K-1. This Board cannot add such a requirement to the parties' agreement."

We believe that the situation presented in this case concerning the language under this Rule 8-K-1 is clearly distinguishable from the line of authority that work performed by an employee on a voluntary basis need not be compensated because there was no Carrier direction, instruction or tacit approval for such work. We so hold because of the particular language found in the Rule and the distinguishing factor that the facts here involve training and not specific job performance. See Carrier Member's Dissent in Award No. 10416.

The Carrier's asserted past practice of payment for training only if attendance at such training sessions was required by the Carrier does not change the result. It is axiomatic that a claimed past practice cannot vary clear and unambiguous contractual language. See Second Division Award Nos. 6025 (". . .a conflicting past practice, no matter how long endured, does not serve to alter or nullify clear and unambiguous contract language."); 3873 ". . . the law is also firmly established that custom or past practice are of no probative value in determining the meaning of a labor agreement if the wording thereof is clear and unambiguous."); 1479 (". . . it is fundamental that a practice will not change the plain words of an agreement. . . [A]cquiescence in the violation of an agreement operates only as an estoppel against retroactive reparations."). Here we find that the language of the Rule is clear and unambiguous. The clear language of the Rule, if the employees are "attending" and the session is "related," they "will be paid". Therefore, past practice cannot be considered under the circumstances of this case. In light of this Finding, it is therefore not necessary to determine whether or not a bona fide past practice existed.

The only remaining issue is to determine whether the Claimants were attending "related training sessions" to qualify for compensation under Rule 8-K-1. On the basis of this record, we are sufficiently satisfied that the Organization has met its burden and that the sessions in question were "related" within the meaning of the Rule. In Award No. 10416, the Board found that welding classes were "related" within the meaning of the Rule for a Machinist taking welding classes since a Machinist may perform welding functions (although the Claimant therein did not do so). In Award No. 10416, the Board found, contrary to the argument of the Carrier herein, that there was no requirement that there be a complete overlap with job duties or that there must be relation specifically to an employee's regular duties. That reasoning is equally persuasive here. The record demonstrates that the established classes were for the retraining of Machinists and other crafts for the maintenance of General Electric diesel engines due to the transfer and consolidation of locomotive repair work from Ohio to the Juniata Locomotive Shops. Since Machinists may well work on those engines, we find that such classes were sufficiently "related" within the meaning of the Machinists' duties, the language of Rule 8-K-1 and Award No. 10416 to qualify for compensation under the Rule.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1986.