

Award No. 14182
Docket No. MW-14517

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it required Yard Foreman J. C. Goodson, Assistant Section Foreman E. V. Fretwell, Relief Foreman E. G. Stokes, Welder L. G. Blackwell, Welder Helper Ben Hohenstein and Machine Operators L. A. Matusick, G. A. Durrance, C. E. Red and Stanley Simpson to attend rules classes (instructions on and discussion of new Carrier rules) on either July 14, July 28, or August 11, 1962 and refused to compensate said employees for such time consumed in the Carrier's service, and, as a consequence thereof.

(2) Claimant Stokes be allowed three (3) hours' pay at his time and one half rate and each of the other claimants named in Part (1) of the claim be allowed payment on a "minimum call" basis (2'40" at time and one-half rate).

EMPLOYEES' STATEMENT OF FACTS: The Carrier issued instructions reading:

"FLORIDA EAST COAST RAILWAY COMPANY

St. Augustine, Fla.,
March 6, 1962

File 567-1

TRANSPORTATION RULE BOOK: Operating Rules effective April 1, 1962.

TO ALL CONCERNED:

A new issue of Operating Rules will become effective April 1, 1962. This issue will supersede the Book of Rules of Transportation Department effective December 1, 1923. Automatic and Interlocking

consideration of all previous awards it is the judgment of this Division that the reasoning and the logic of Award 7577 with Referee Shurgue is controlling. * * ”

* * * * *

In light of this the claim is denied.”

In Award 1427, the Third Division, with Referee Royal A. Stone, held that:

“Precedent and other authority quite aside, it seems that claims of this kind overlook the fact that employes, in qualifying themselves for positions and keeping themselves qualified, and to achieve promotion, are serving themselves primarily. Only in a secondary sense are they serving the carriers. It is suggested that the claimant in this case was required to travel an unusual distance on his own time. If so, the fact is regrettable but not determinative. * * * ”

Implicit in the argument for the claim is the thesis that the employer is bound to pay employes for time spent in taking an examination, even though, as here, it is a biennial affair. Carried to its logical conclusion, that view would entitle employes to pay for time and effort spent in learning rules.”

In Award 487, the Third Division, with Referee Arthur M. Millard, stated:

“There is no doubt but that some inconvenience and sacrifice of time was occasioned the claimants by the requirements of the carrier and the examination of the employers to determine their familiarity with the Book of Rules and Regulations of the Operating Department; at the same time such examination was as much to the advantage of the employes as to the carrier, inasmuch as it constituted a means of certifying or re-certifying the employes to the requirements of the positions of responsibility they held with the carrier.”

Also see Awards Nos. 2508, 2828, 3302 and 4181 of the Third Division.

In Award 3150, the Second Division of the National Railroad Adjustment Board expressed the following fundamental principle pertinent to this dispute:

“We have consistently held that employes required to take tests are not performing work or service under the rules. Even though they are inconvenienced thereby we cannot sustain a pay claim in the absence of a rule providing compensation for time so spent.”

(Emphasis ours.)

Also see First Division Awards Nos. 3182, 5213, 5464, 6263, 6846, 7663, 12206, 13913, 15035, 17382, 18110 and 19003.

For the reasons stated the claims are without merit and should be denied.

OPINION OF BOARD: The parties and the Agreement are identical, and the facts in this dispute are similar to those in Award No. 14181.

For the reasons stated in said Award No. 14181, we conclude that there is no merit to the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1966.