NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20323
THIRD DIVISION Docket *Number U-20520*

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees
(The Western Pacific Railroad Company

STATEMENT OP CLAIM: Claim of the System Committee of the Brotherhood (GL-7443) that:

1. The Western Pacific Railroad Company violated the current Clerks' Age-t at Sacramento, Yuba City, Oroville, Keddie, Portola, California and at Reno, Nevada, when it deducted two hours' pay from their pay checks in the first period of October, 1972; and,

2. The Western Pacific Railroad Company violated the current Clerks' Agreement when it failed and refused to allow employes Ii. H. Singh, E. E. England, W. L. Fierro, R. C. G-sin, A. N. Giulio, P. Gugliemeno, J. V. Leland, L. J. Lund, W. McCullough, R. M. McClure, J. *McPherson,* C. B. Miller, J. Perales, T. J. Quinn, F. J. Rapp, W. J. Richard. A. Robinson, F. P. Semenza, L. B. Shields, A. Skootsky, N. B. Stevenson, E. Sutter, M. L. Ward, G. C. W-r, L. Wells, L. J. Wheeler, R. G. Williams, E. L. Wuelfing and E. V. Ziegler overtime compensation for attending Books of Rules classes outside the assigned hours of their regular assignment on August 28, 1972; and,

3. The Western Pacific Railroad Company violated the current Clerks' Agreement when it refused to allow employes at Stockton Yard overtime rate for attending Books of Rules classes outside the assigned hours of their regular assignments various dates between July 31 and September 20, 1972.

4. The Western Pacific Railroad Company shall now be required to allow compensation claimed for all involved employes set forth in paragraphs (1), (2) and (3) supra.

OPINION OF BOARD: In July, 1972, Carrier posted a bulletin which required Claimants to attend Rules Instruction Classes on the Operating Book of Rules; which book of rules became effective July 1, 1972.

All Claimants attended the classes, either on rest days or after assigned working hours. It appears that at the classes, Claimants were advised to submit claims for overtime compensation for their attendance.

Certain Claimants did receive compensation at the overtime rate, however, the Carrier subsequently deducted the premium pay. Other claims for overtime compensation were disallowed. In all instances, Claimants received straight time compensation for attendance at the classes.

The Organization alleges violations of various rules which provide for premium pay for "time", "work" and/or "service" rendered in excess of eight hours per day, in excess of forty hours per week, on assigned rest days, etc. Claimants urge that because attendance at the classes was mandatory, they were required to attend the sessions in the same manner that they would be required to protect regular assignments. Accordingly, the relied upon rules of the Agreement require payment of premium rates.

The Carrier concedes that Claimants attended classes outside of regular hours, but defends its refusal to pay premium pay on the ground that no section of the Schedule Agreement provides for such compensation under the circumstances present in this dispute. In addition, the Carrier cites a *number* of Awards supporting its contention.

The Carrier further states that nothing in the Rules Agreement requires a payment of any compensation for attendance, but straight time payments were made gratuitously by the Carrier because the employees devoted certain time on other then scheduled duty hours.

Initially, the Board notes that the Agreement between the parties contains no provision which specifically provides for compensation for attendance at Rules Instruction Classes. Accordingly, it is incumbent upon the Board to determine if the words "work", "service" and "time", as contained in the premium pay portion of the Agreement, are broad enough to include the type of situation here under consideration.

The Organization cites certain Awards dealing with requirements for attendance at certain functions. In Second Division Award 1438 (Swacker), employees were required to attend an investigation on their own time. The Carrier argued that there was no rule which required compensation, however, the Board noted an elementary principle

of law of contracts dealing with employers and employees stating that if an employer calls an employee to performs service, there is created an implied agreement to compensate, and the claim was sustained. In Award 3462 (Messmore), a similar result was reached. Consistently, in Award 4790 (Robertson), an employee instructed to attend a Regional Conference cm his day off successfully prosecuted his claim because of the finding of very little mutuality of interest. See also, Award 10062 (Daly) and 18957 (Edgett).

However, none of the Awards brought to out attention have sustained claims framed in the same context as the dispute now before us.

For example, in Award 7577 (Shugrue), the Board noted:

> "There is no conflict in the awards of this Division on the question of whether attending rule re-examinations classes constitutes 'work' or 'service' as those words are used in the rules here involved. Careful examination of other awards cited are not fouud to be applicable to the situation existing in this docket. We have held that attending rules re-examination classes is not the 'work' or 'service' referred to in the applicable rules which could give rise to a valid claim for overtime payments. Awards 773 and 487.
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> Whether or not we feel that appropriating an employe's time in this manner, absent of course a specific rule, is fair or just is not for us to say for this Board does not sit as a court of equity. We are limited to interpreting the applicable Agreement provisions as they stand. It would be exceeding our statutory function to allow compensation where the Agreement itself does not authorize it. We do not believe it to be the prerogative of this Board to attempt to do so by reading into the rules something that is not there. We feel that the employe's recourse is to negotiate with the carrier under Section 6 of the Railway Labor Act."

Similarly, the Board, in denying a similar claim, in Award 4250 (Carter) stated:

> "To recwer compensation for attending class lectures on operating rules, such right must be found from the language of the Agreement. Awerde 2828, 3302.

> This Board does not sit as a court of equity. We just interpret the applicable Agreement provisions as they ware drawn by the parties. It would be a usurpation of authority to allow compensation to en employe where the Agreement does not authorize it. The remedy is by negotiation and not by faulty interpretation. .
>
> The quoted portion of Article VII does not authorize compensation for attending class lectures on rules. The statement therein contained that 'employes wtified or called to perform work not continuous with the regular work period' precludes any notion that it was intended to include attendance of class lectures on operating rules. The word 'work' as herein used was never intended to have such a generic meaning as the Organization here contends."

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.

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 Awsrde.

The fact that certain Carrier Officials may have incorrectly stated an entitlement to premium pay does wt, in the view of the Board, bind the Carrier under the facts and circumstances of this record, nor is there persuasive arguments that the Carrier was incorrect in recouping overpayments made to certain of the Claimants.

We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulse
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1974.