NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22704
THIRD DIVISION Docket Number SG-22544

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Missouri Pacific Railroad Company
((former Texas and Pacific Railway Company)

STATEMENT OF CLAIM: "Claims of the General Committee of the Brotherhood of Railroad Signalmen on the former Texas and Pacific Railway Company:

Claim No. 1. Carrier file: B 315-137

On behalf of Communications *Maintainer* G. W. Bennen, New Orleans, for the additional payments listed below, account not *being* properly compensated for services rendered off his assigned territory outside working hours (Cupertino, California) on October 30 and 31 and on November 6, 7, *and 9, 1976. Payments due under* the Memorandum of Agreement of December 19, 1968, file 380-1167-1, the National double time rule and Rule 28(k) of the Texas and Pacific Signalmen's Agreement.

	Claims		
S.T. Rate	Date	O.T. Hrs.	D.T. Hrs.
($1500.22 per mo.)	(1976)		
	10/30	16	8
	10/31	16	8
	11/ 6	16	8
	11/ 7	16	8
	11/ 9	4.3	—
		68.3	32

Claim No. 2. *Carrier* file: B 315-136

On behalf of Communications Maintainer L. T. Gilmore, Avondale, Louisiana, for the additional payments listed below, account not being properly compensated for service rendered off his assigned territory outside working hours (Albuquerque, New Mexico) on October 3, 4, 5 and 8, 1976. Payments due under the Memorandum of Agreement of December 19, 1968, file 380-1167-1, the National double time rule and Rule 28(k) of the Texas and Pacific Signalmen's Agreement.

"Claims

S.T. Rate	Date	1/2 T. Hrs.	S.T. Hrs.	O.T. Hrs.	D.T. Hrs.
($1500.22 per mo.) (Oct. 76)					
	3		3		
	4			16	8
	5	8		8	8
	8	—	4	—	—
		8	7	24	16"

OPINION OF BOARD: Claimants were both selected to attend schools outside of their regularly assigned territories for periods of time which included standby days and rest days.

While at school, Claimants continued to receive their regular pay. They were also compensated for all travel expenses. Classes ran for five days a week.

One of the Claimants is headquartered in New Orleans, Louisiana. He attended school in Cupertino, California to study about the installation of a computerized automatic dial telephone plant. He spent a total of sixteen (16) days, from Sunday October 24, 1976 to Tuesday November 9, 1976 in the program. Although Saturday is his standby day (for which he was paid) and Sunday is his rest day, this Claimant received no extra pay for the two weekends he spent in Cupertino. He was allowed time and one half for time spent traveling to California but was given no allowance for travel time beyond his normal hours on his return.

The other Claimant is headquartered in Avondale, Louisiana. He attended school in Albuquerque, New Mexico for a total of five days where he was instructed in the proper procedures to follow for adjusting and maintaining a microwave system. While in school he received his regular pay for Monday October 4, 1976 (a standby day) and eight (8) hours straight time pay for Tuesday October 5 (a rest day). He was allowed travel time on October 3 and 9 at his half-time rate.

The Organization initiated claims on behalf of the two employes, stating that they were entitled to continuous pay at the time and one-half and double-time rates, except during regular working hours, from the time they left their residences until they returned home. The claims were progressed separately, but have been combined for submission to the Board since they involve the identical issue.

The Organization contends that "going to school off of an employe's regular assigned territory under orders from the Carrier (should be) considered work and/or service under the Agreement." Specifically, the Organization contends that the Carrier violated a December 19, 1968 Memorandum of Agreement, the National Double Time Rule, and Role 28(k) when it did not reimburse the Claimants for "travel time pay (and) time worked during or outside of their regularly assigned hours on their respective rest days."

The Memorandum of Agreement provides, for communications maintainers, that:

> "Monthly rated communications maintainers required to perform work on other than their assigned territories outside their assigned hours on the first five days of their work week and on the sixth day of their work week and on holidays will be compensated therefor in accordance with rules applicable to hourly rated employes, in addition to their regular monthly rate."

Rule 28(k) provides that:

> "Service rendered by employes on assigned rest days shall be paid for under the call rule, Rule 19. Regular assigned rest days will not be changed except by written agreement with the General Chairman and 48 hours advance notice to employes affected."

The National Double Time Rule is discussed below.

The Organization contends that it is because the employes were assigned to go to school on other than their regularly assigned territories that the time in school constitutes work under the Agreements.

The Organization additionally argues that two Third Division Awards cited by the Carrier (21394 and 21414) are not relevant to the issue since they involved distinguishable factual situations and, in one case the employes were not covered by the December 19, 1968 memorandum.

It is the Carrier's position that "attending a training school is not work or service." The Carrier contends that the training was of "mutual interest" and that, where there is such mutuality, the Board has repeatedly rejected any claim for monetary allowances in such circumstances.

The Carrier specifically rejects claims for continuous pay under the December 19, 1968 Memorandum Agreement and under Rule 28(k) since these agreements are only concerned with payments for "work" and for "service rendered." The Carrier rejects the claim for double-time pay under Article V of the November 16, 1971 National Agreement (The National Double Time Rule) since the Organization exercised an option to be excluded from the rule's application, retaining a more favorable rule already in existence on the property. Moreover, the Carrier argues, the double-time issue is moot.

The Carrier additionally points out that the Claimants never contended that there was no mutuality of interest in their attendance at the training schools.

Importantly, the Agreements between the parties contain no provisions which specifically require compensation for attendance at a training class. Accordingly, it is incumbent upon the Board to determine if the words "work" and "service," as contained in the Agreements, are broad enough to include the type of situation here under consideration.

In Award 10808 (Moore) and later in Awards 20323 (Sickles) and 20707 (Lieberman) 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."

In all three of these cited cases mandatory attendance at a training or safety class was found to involve a mutuality of interest.

In the cases before us, the Claimants as well as the Carrier benefited by the instruction. Thus, where the Claimants were required to be in class or merely to spend a rest day outside their territory, the Board must find that the mutually beneficial training was not the same as work or service.

This is not to say that reasonable minds might not differ in determining the appropriate application of the Agreements. Nevertheless, numerous awards have held that training, in circumstances such as these, is not the same as work or service. This Board finds no reason to depart from that precedent.

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

That the parties waived oral heating;

That the Carrier and the Employes involved in this dispute are respectively Carrier end 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; end

That the Agreements were not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: C W Pavlos
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.