

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31103
Docket No. TD-31320
95-3-93-3-341

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Consolidated Rail Corporation

STATEMENT OF CLAIMS:Claim No. 1, System Docket TD-149, Claimant Carrow

"I was scheduled to attend a class of the American Red Cross Standard First Aid and Adult CPR, a course offered by Conrail. The class was on Jan. 24, 1992 at 8:00 P.M. and lasted until 4:00 P.M. I was on a rest day until 3:00 P.M. when my K-2 position starts. I was only paid 8 hours pay, but should have been paid 8 hours at the time and one half time rate per ATDA Agreement RULE 11 SECTION a Paragraph 2. Please advise when payment will be made."

Claim No. 2, System Docket TD-151, Claimant Colestock

"G. R. Colestock was scheduled to attend a class of the American Red Cross Standard First Aid and Adult CPR, a course offered by Conrail. The class was on Jan. 24, 1992 at 8:00 A.M. and lasted until 4:00 P.M., G. R. Colestock was on a rest day until 3:00 P.M. when his regular E-2 position was to start. Mr. Colestock was only paid 8 hours pay, but should have been paid 8 hours at the time and one half time rate per ATDA Agreement RULE 11 SECTION a Paragraph 2. Please advise when payment will be made."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Rule 11(a) paragraph 2 reads, in part, as follows:

"A regular assigned train dispatcher who is required to perform service on the rest days assigned to his position will be paid at the overtime rate for service performed on either or both of such rest days with a minimum of four (4) hours."

Carrier denied these Claims for two reasons on the property: First, that Claimants attended the class voluntarily and, second, that payment under Rule 11 was not supported because neither Claimant performed "service" by attending the class.

Carrier also raised a Rule 15 defense in its submission, but our review of the record fails to reveal that any such argument was raised on the property. Since it is well established that we will not consider new argument raised for the first time before this Board, we have disregarded this aspect of Carrier's position.

The Organization also objected to Carrier's "service" defense as being new material. We disagree. Carrier's May 5, 1992 response to each Claim on the property makes several references to this defense. For example, the letter reads in part:

"Claim demonstrates no support for payment as requested on appeal under Rule 11. Claimant performed no compensated service for the Carrier this date and therefore its relevance has no force or effect in the instant case."

The question of the proper rate of pay for time spent in various kinds of training classes under similar overtime payment provisions has been addressed many times by the Second and Third Divisions of this Board. The awards cited by Carrier have generally found that training classes do not constitute work or service, within the meaning of the overtime payment provisions involved, in the absence of explicit language establishing a clear intent of the negotiating parties to the contrary. See Second Division Awards 12639, 12400, 12367, 12359, 12235 and Third Division Awards 27021, 20323, and 30047. Third Division Award 30047 is particularly relevant here. It involved the same Organization and a very similar overtime payment provision.

Once the issue was joined by the Carrier in this dispute, the Organization had the burden of proof to establish that the instant parties intended to include time spent in training classes as "service" within the meaning of Rule 11(a). The record provides only assertion, with no probative evidence, in support of the Organization's position. Accordingly, we must deny the claims.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.