

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31765
Docket No. TD-31466
96-3-93-3-458

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

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

STATEMENT OF CLAIM:

"On Jan 9, I was ordered to work 1st trick, off my tour of duty. I only received 8 hrs. regular pay, but should have been paid 8 hrs. time and ½. Please reimburse me 4 hrs. as per agreement."

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 were given due notice of hearing thereon.

Claimant attended a Continuous Quality Improvement seminar on January 9, 1992. Claimant and the Organization contend his attendance was required at this training class. Under Rule 11(a), the Organization says Claimant was entitled to the overtime rate of pay for the day. Rule 11(a) reads, in pertinent 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."

On the property, the sole defense raised by the Carrier was that Claimant's attendance at the training seminar was voluntary. Since Claimant was not required to attend, he was not entitled to overtime pay under Rule 11. Claimant, to the contrary, claims he was ordered to attend. Both offered evidentiary support for their positions on the property. The record contains Claimant's statement that he was ordered. It also contains a copy of a Carrier notice that CQI training was voluntary. It is apparent this notice was exchanged on the property because the copy in the Carrier's Submission contains Claimant's written comments on it.

As a result of the foregoing, we have before us an irreconcilable dispute of material fact. Since it is not our function to resolve factual disputes, we have no choice but to dismiss the claim.

AWARD

Claim dismissed.

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 24th day of October 1996.