

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31949  
Docket No. CL-32318  
97-3-95-3-115

The Third Division consisted of the regular members and in addition Referee Fred **Blackwell** when award was rendered.

P A R T I E S : (Transportation Communications International Union  
(National Railroad Passenger Corporation (AMTRAK))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (CL-I 1125) that:

The following claim is hereby presented to the Company in behalf of Claimant(s) listed on Attachments A and B.

(a) The Carrier violated the Clerks’ Rules Agreement effective July 21, 1972, as revised, particularly Rules 7, 14, 16, 17 and other rules. **as well as** Memorandum of Agreement No. 9, when following the Claimants’ attendance at company sponsored meetings held in January at Syracuse, NY, and in February at Albany, NY, as directed in letters dated January 19 and 27, 1993, or verbally on subsequent dates, and it failed to **fully** compensate Claimants’ at the **overtime** rate, based on the appropriate pro rata rate of pay for each of their **regular** positions, for **all** hours they worked outside their regular assigned tours of duty.

(b) Any Claimant who attended said meeting(s) continuous with their regular work period, or were required to return for further service following their regular work period should each now be allowed a minimum of three (3) hours time and one-half pay, or on the minute basis, if they were held longer than two (2) hours, based on the appropriate hourly rate for each hour that they attended said meetings.

(C) **In** any case where a Claimant was required to return for further service following their regular work **period**, they are to be considered as if on **continuous duty**, and paid accordingly.

- (d) Any Claimant who attended said meeting(s) on their assigned rest day should be allowed a minimum of six (6) hours punitive pay, based on the pro rata hourly rate of their regular assigned position.
- (e) ~~In~~ all other cases, Claimants' should each be **allowed** a minimum of three (3) **hours** time **and** one-half pay, or on the minute basis if they were held longer than two (2) hours, based on the appropriate hourly rate for each hour that they attended said meetings.
- (f) Claimants' should be allowed the appropriate travel time and expenses incurred for their attendance.
- (g) This claim has been presented in accordance with Rule 25 and should be allowed.

**ATTACHMENT 'A' Tuesday, February 16, 1993**

<b>Irenio Dulay</b>	<b>Gary Villeneuve</b>
<b>Jane Palmer</b>	<b>Dave Schecter</b>
<b>Katherine Abaire</b>	<b>Bob Leavitt</b>
<b>Mike Brown</b>	<b>Gene Jakubowski</b>
<b>Jeff Brown</b>	<b>Martin Robinson</b>
<b>Janis Gaunay</b>	<b>Kathy Fay</b>
<b>Steve Leonardo</b>	<b>Michelle Kepner</b>
<b>Juanita Palmer</b>	<b>Stan Zeh</b>
<b>Deb Sanderson</b>	<b>Silas Blackmon</b>
<b>Rich Kweller</b>	<b>Dennis Baumgardner</b>
<b>Fred Hiller</b>	<b>Ron Wood</b>
<b>Jim Blase</b>	<b>Patti Anderson</b>
<b>Ken Jensen</b>	

**ATTACHMENT 'A' Wednesday, February 17, 1993**

<b>Diana Wilsey</b>	<b>John Klrcher</b>
<b>Tom Austin</b>	<b>Joe McCallion</b>
<b>Jim Lagios</b>	<b>Andy Pelletieri</b>
<b>Bill Jennings</b>	<b>Helen Ross</b>

Joe Wolodkevich  
Brian Howard  
Marc Morris  
Kevin Wilbur  
Sue Doyle

Bob Hall  
**Kathi Brennan**  
Gerry Paulsen  
Brian Jeffers  
Tom Berg  
Bob Murphy  
Toni **Dively**

ATTACHMENT 'B' Wednesday, January 27, 1993

Francis **LaColla**

Terry Fuller

Terry **Gilbride**

Eileen Rush

Frank Zalocha

Mark **Kavouksorian**

Frank Conte

Jim Gallagher

Jim Jones

Wait Seim

Tony **Zizzi**

John Schlemmer"

*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.

This **issue** in this dispute is whether the proper rate applicable to payment to **the** herein Claimants for attending **meetings** on **their rest** houn and rest days, **is** the overtime rate in respect to some **Claimants, as** contended by the **Organization**, or whether the straight rate, which has **been paid by the Carrier, is** correct

The record shows that approximately 45 Claimants attended Carrier sponsored meetings held in Syracuse, New York, in January 1993, and in Albany, New York, on February 16 and 17, 1993.

The Carrier asserts that the Claimants' attendance at the meetings in question is not covered by any contract rule and that although payment of the Claimants was **not** required under the contract, the Management has remunerated the Claimants fairly, in the spirit of good will which was the main purpose of the meetings, and in the same manner that the Carrier paid employees for attending earlier meetings in Buffalo, New York and New York Penn Station: from which no similar claims have resulted. The Carrier submits further that the local Management and the Local Chairman discussed the meetings before scheduling the Albany meetings; that many of the Claimants attended the meetings during their regular assigned tours of duty and were paid a regular day's pay; that those employees who attended outside their tours received *four* hours compensation for attending the two hour meeting; and that employees who traveled from outlying points were paid mileage and travel time, in addition to the four hours for attending.

The Organization submits that the **claim** is supported by Rules 7, 14, 16, 17 of the **Agreement** and Memorandum of Agreement No. 9.

In assessing the foregoing, **and** the entire record, including the Parties' Submissions in support of their positions in the case, the Board finds that the record **shows** affirmatively that the employees were required to attend the meetings and, further, that the payment by the Carrier of straight rate gives the employees *time in* attending the meetings the status of "work" or "service" under the applicable **Rules**. Accordingly, the Board finds and awards that the Claimants are entitled to be paid in accord with **Rule 14** of the Agreement, except that any employee who did not attend any meeting is not eligible for pay under said Award.

In view of the foregoing and based on the record as a whole, the Board **finds that** the record shows the **claims** to be meritorious and that, accordingly, a sustaining **Award** is **in** order. The record supports the claims and the claims are sustained in **accordance with** and **shall** be paid under **the** provisions of **Rule 14** except that any employee who did not attend the *meetings* is **not** eligible for compensation under this Award.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of March 1997.

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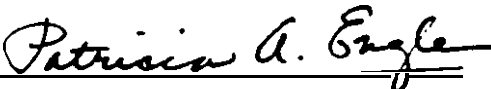
**CARRIER MEMBERS' DISSENT  
TO  
THIRD DMSION AWARD 31949, DOCKET CL32318  
(Referee Blackwell)**

The Majority's finding that Claimants' attendance at the "face-to-face" meetings with management was "required," and that Carrier's payment of straight-time pay rates gave attendance at the meetings "the status of '*work*' or '*service*'" under the Overtime rule defies evidence of record concerning the circumstances of the meetings and long-standing industry precedent as to what constitutes "*work*" or "*service*."

The plainly voluntary nature of the meetings is evidenced by the acknowledged fact that some of the **very** Claimants cited opted not to attend, without incurring any such disciplinary consequences as typically result from unexcused absence or failure to comply with **instructions**. It is also an acknowledged fact that attendees were paid consistent with past practice attached to such gatherings. Given the Organization's knowledge of and previous acquiescence to that practice, the Majority's honoring **this** claim denigrates **fundamental** work-relationship principles so critical to labor-management harmony and stability in today's workplace,

The Claimants who chose to attend the cited "face-to-face" meetings listened to top managers' views on the direction of the Carrier's business, and were invited to ask questions and make **suggestions**. While **this** is not "*work*" or "*service*" as defined by the parties' Agreement or the preponderant weight of precedent promulgated by this Board, the Carrier paid straight time as it had in the past, in a good faith validation of its commitment to employee involvement. The Majority's seizure of that **gesture** to invoke overtime pay chills efforts toward labor-management cooperation vital **to** this Carrier's continued **operations**, while entertaining an **irredeemably** nostalgic return to days *of unjust* enrichment in the industry.

For these reasons, we do dissent and hold this Award to be without precedent.

  
Patricia A. Engle

  
Martin W. Fingerhut

  
Michael C. Lesnik

  
Paul V. Varga

4/25/97