

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33836  
Docket No. CL-33321  
99-3-96-3-814**

**The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.**

**(Transportation Communications International Union**

**PARTIES TO DISPUTE:**

**(The Burlington Northern and Santa Fe Railway Company**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Organization (GL-11473) that:**

1. **Carrier violated the Schedule Agreement when it failed to compensate clerical employe M. J. Peretto, Crew Caller, Englewood, Colorado, time and one-half for working on his rest day, Tuesday, March 8, 1994.**
2. **Carrier shall now compensate Mr. M. J. Peretto for four hours at the time and one-half rate, less the straight time already paid for March 8, 1994."**

**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.**

**At the relevant time, Claimant was a Crew Caller at Englewood, Colorado. On Tuesday, March 8, 1994 (Claimant's rest day), Claimant was required to take a 90 minute mandatory training class on back pain prevention. Claimant was paid straight time for the class. This claim seeks four hours at the overtime rate.**

**Rule 36(B) provides:**

**“B. Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days are being accumulated under paragraph G of Rule 29 (Work Week Rule).”**

**Rule 38(B) provides:**

**“B. Employees notified or called to perform work on their assigned rest days shall be allowed a minimum of four (4) hours at time and one-half (1-1/2) for four (4) hours’ work or less, and if held on duty in excess of four (4) hours, time and one-half (1-1/2) will be allowed on the minute basis.”**

**The key words in the above quoted rules are “perform” and “work.” The Organization has not shown that Claimant “performed . . . work” when he attended the training class on back pain. Claimant is therefore not entitled to overtime.**

**The weight of authority requires this result. Third Division Awards 30047; 31103; 32378. See also, Second Division Awards 12234, 13065; Fourth Division Award 4900.**

**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 21st day of December 1999.**