

**Form 1**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35192  
Docket No. TD-35246  
00-3-99-3-103**

**The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.**

**(American Train Dispatchers Department/  
( International Brotherhood of Locomotive Engineers  
PARTIES TO DISPUTE: (  
(Burlington Northern Santa Fe Railroad Company**

**STATEMENT OF CLAIM:**

- “A. The Carrier violated the agreement, Article 1(j) of the Agreement dated January 6, 1995 in particular, when on March 11, 1998 Ms. Hansen trained on new equipment in the Fort Worth office on her rest day.**
- B. The Carrier shall now provide Ms. Hansen the difference between eight (8) hours at the straight time rate and eight (8) hours at the Overtime rate of time and one-half.”**

**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 time this dispute arose, the Claimant was a Train Dispatcher employed by the Carrier in the Carrier’s centralized train dispatching office in Fort Worth,**

Texas. On March 11, 1998, the Claimant attended a Transportation Support System ("TSS") training class on her rest day. She was compensated eight hours at the straight time rate. On the same date as she attended the training, the Claimant submitted a claim for eight hours at the overtime rate "account TSS training on assigned rest day."

That claim was denied on April 14, 1998. In its denial, the Carrier noted that training is paid at the pro rata rate of pay for the amount of time spent in training. The Organization appealed that declination on May 27, 1998. In its appeal the Organization asserted that the Carrier had violated the Agreement dated January 6, 1995, specifically Article 1(j), when it failed to pay the Claimant at the punitive rate for training on her rest day. Article 1(j) of the 1995 Agreement reads as follows:

**"Train Dispatchers relocating to the Fort Worth Network Control Center will be provided necessary training or breaking-in on position and/or new equipment or method of dispatching and will be compensated at the trick dispatcher rate. Dispatchers required by the Carrier to train on their rest days under this agreement will be compensated at the time and one half rate. Training under this section will be in addition to any other provisions contained in the May 3, 1993 Memorandum of Agreement."**

In its May 28, 1998, denial of the appeal, the Carrier pointed out that the Claimant had already relocated to Fort Worth in mid year of 1993. Therefore, according to the Carrier, the Memorandum of Agreement of May 3, 1993, as amended January 6, 1995, does not apply. The Organization reiterated its position in its appeal of July 28, 1998, and contended that the Claimant did, indeed meet the criteria set forth in Article 1(j) of the 1995 Agreement.

It is the position of the Carrier that the current dispute has been resolved under the doctrine of res judicata and stare decisis. Specifically, it cites Third Division Awards 20707, 30047, and 32204. In Award 20707, between these same parties, the Board held that attendance at instruction classes is not "work" or "service," within the meaning of the Agreement, and does not subject the Carrier to penalty payment unless otherwise provided in the Agreement. The Carrier further insists that the provisions for penalty payments to employees training on their rest days under Article J of the January 6, 1995, Agreement, apply only to those employees then transferring to Fort Worth under that Agreement.

**It is clear from the record that the Claimant was not undergoing training as a result of her transferring to Fort Worth under the provisions of the January 6, 1995, Memorandum of Agreement. She had already been in Fort Worth since mid-1993, and, therefore, was not transferred under the subsequent Agreement. In light of those facts and the precedential Awards on this matter between the same parties, the Board finds no basis upon which to sustain the claim.**

**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 20th day of December, 2000.**