

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35579
Docket No. TD-36025
01-3-00-3-132

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

“The Burlington Northern Santa Fe Railroad Company (hereinafter referred to as the ‘Carrier’) violated the current effective agreement between the Carrier and the American Train Dispatchers Department, Brotherhood of Locomotive Engineers (hereinafter referred to as ‘the Organization’), Article 2(d) and the Memorandum of Agreement dated March 5, 1974, Item 2 in particular, when on February 16, 1999, the Carrier required train dispatcher J. R. Greene to report prior to the start of his regular assignment for a ‘NT training class’. Mr. Greene arrived prior to the start of his shift, as required by the Carrier, and no training was given as the Carrier had failed to provide an instructor for this training. Mr. Greene complied with the Carrier’s instructions, and the Carrier failed to provide proper compensation for his reporting to work prior to his scheduled starting time.”

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.

The Claimant herein was directed to report one hour prior to his regular starting time to attend a training session on a new computer program. This training was provided for all Train Dispatchers. In this instance, the instructor was not available, and the Claimant's training did not occur as scheduled. The Claimant received one hour's pay for complying with the Carrier's instructions to report for the training.

Previous Awards have confirmed the propriety of straight-time remuneration for scheduled training time, and no further discussion of this aspect is required. The Organization, however, contends that, because the training did not actually occur, the Claimant is entitled to be paid two hours at the punitive rate, under the terms of Article 2(d), CALLS. This provision reads as follows:

"Except as provided in Article 2, Section (b), and Article 3 (b) [not relevant here], a regularly assigned train dispatcher called to perform service, and reporting, outside the hours of his regular assignment shall be paid actual time for such service, with a minimum of two (2) hours, at rate of time and one half of the position for which he is called."

The Board finds the Organization's position without merit. There is every indication that the Carrier had in fact anticipated that the training would occur. There is no indication that the Claimant was assigned duties during this one-hour period. As the Carrier argues, Article 2(d) presupposes that an employee is called to perform "service" at a "position for which [the employee] is called." The Claimant herein was not called for "service" nor was he assigned a "position" during the one-hour period. Payment as if the scheduled training had occurred is entirely appropriate.

The Organization submitted the dispute to the Board under date of February 24, 2000. The record indicates a procedural dispute concerning an exchange of correspondence, which consisted of a Carrier letter dated February 22 received by the Organization on February 28; a February 28 response by the Organization; a March 8 Carrier rejection of this response because it was originated after the claim was filed with the Board on February 24, 2000; and a further Organization response thereto

dated March 14, defending the propriety of its February 28 letter. Third Division Award 34228 discusses in detail the validity or lack thereof of correspondence in similar circumstances. Here, the Board finds nothing in the exchange that would affect the Board's resolution of the matter. In view of the particular facts herein and the resulting resolution, the Board finds no purpose in further review of this aspect.

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 24th day of July, 2001.