

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36628  
Docket No. SG-36189  
03-3-00-3-383

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

**PARTIES TO DISPUTE:** ( **(Brotherhood of Railroad Signalmen**  
**(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:**

**Claim on behalf of J. R. Hernandez, for payment of forty-five minutes at the straight time rate, plus skill differential. Account Carrier violated the current Signalmen’s Agreement, particularly Rules 17 and 13, when on March 16, 1999 Carrier required the Claimant to travel (outside of his regularly assigned hours) to attend an FRA Instruction Class and failed to compensate him at the proper rate for this work. Carrier compounded the initial violation by failing to provide a reason for disallowing the claim in violation of Rule 69. Carrier’s File No. 1189957. General Chairman’s File No. 92132824. BRS File Case No. 11297-UP.”**

**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 in this case was regularly assigned as a CTC Maintainer at Buford, Wyoming, with assigned work hours of 7:30 A.M. to 4:00 P.M. On March 16, 1999, the Claimant used his company-assigned vehicle to travel to and from Laramie, Wyoming, to attend a F.R.A. Instruction Class. According to the claim which was presented on the Claimant's behalf, he was instructed by a Carrier officer to claim travel time at the straight time rate for 45 minutes each way from Buford to Laramie and return. The Organization is now seeking payment of the two 45 minute periods at the overtime rate in lieu of the straight time rate. The Organization also contends that because the Carrier did not properly deny the claim it must be paid as originally presented.

The claim as initially presented is based upon the language of Rule 13 and Rule 17 of the Agreement. Those Rules read, in pertinent part, as follows:

**“RULE 13 - OVERTIME (Subject to Hours of Service Act)**

Time worked preceding or following and continuous with a regularly assigned eight (8) hour work period will be computed on actual minute basis and paid for at time and one-half rate, the regularly assigned eight (8) hour work period will be paid at straight time rate.

**RULE 17 - ROAD SERVICE (Not Held Out Overnight)**

Employees performing service requiring them to leave and return to their home station on the same day (within 24 hours from regular starting time of their assignment) will be paid continuous time exclusive of established meal period from time reporting for duty until released at home station. Straight time will be allowed for all straight time work; overtime for all overtime work and straight time for all traveling or waiting. Employees riding on or operating track motor cars or trucks or required to be responsible for Company tools and/or materials while traveling will be considered as performing work as referred to in these rules and will be compensated accordingly.”

The alleged improper denial of the claim is based upon the language of Rule 69 which reads, in pertinent part, as follows:

**“RULE 69 - CLAIMS AND GRIEVANCES**

- A. All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier will, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified the claim or grievance will be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.”

During the on-property handling of the dispute, it was conceded by the Organization that the “long established” practice on this property was to allow the straight time rate of pay for travel time when such travel was affected by some travel medium other than a company vehicle. It argued that when a company vehicle was used for travel, the employee using the company vehicle was responsible for the tools and/or materials in the vehicle at the time and, therefore, such travel time was “work” and/or “service” as referenced in Rules 13 and 17.

The Carrier argued that employees of this class regularly use their company-assigned vehicles to travel to and from their residence and headquarter sites and have never alleged that such travel time was considered as work or service outside of their assigned hours. The Carrier further contended that attendance at the F.R.A. Instruction Class was mutually beneficial to both the Carrier and the employee, that attendance at such instruction classes is not “work” or “service” and that the long-established practice on this property has been to allow only straight time pay for such travel time.

As concerns the Organization’s contention relative to the alleged improper denial of the initial claim, the Board is not convinced that a violation of Rule 69 occurred. The language of the Carrier’s letter, while not a textbook example of a claims denial letter, nevertheless made it sufficiently clear that the claim was being disallowed. The substance of the denial letter met the requirements of the Rule.

As to the proper payment for travel time to and from the F.R.A. Instruction Class, the Carrier's contention of an established past practice on this property stands unrefuted in the case record. In addition, the issue of payment for attendance at a "mutually beneficial" training function has been previously examined by the Board and it has regularly been held that such attendance is not "work" or "service" as those terms are used in Rules 13 and 17. Therefore, the claim is denied.

A W A R D

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 29th day of July 2003.