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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37151
Docket No. MW-37354
04-3-02-3-387

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it changed the starting time from one starting time period to another starting time period for ET Linemen V. Balance and C. Reading on May 1, 2 and 3, 2001 and when it failed and refused to properly compensate Messrs. V. Balance and C. Reading for said dates (System File NEC-BMWE-SD-4122 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants V. Balance and C. Reading shall now each ' . . . be compensated eight (8) hours each day straight time pay for their regular shift they were directed to suspend and eight hours (8) each day at overtime rate for attending training classes on May 1, 2, 3, 2001.'"

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 claim seeks payment for the Claimants' change of shift hours without proper advance notice at the straight time rate of pay and attendance at training sessions outside regularly scheduled hours at the overtime rate. The Claimants were ET Linemen assigned to Gang J-038 at the relevant time with an advertised tour of duty from Sunday through Thursday, 11:00 P.M. to 7:00 A.M. On Monday morning, April 30, 2001, the Claimants' Foreman advised them that they were required to attend training camp on May 1, 2 and 3 between the hours of 8:00 A.M. and 4:00 P.M. and that there were not to come to work their regular tour hours on those dates. The Carrier paid the Claimants the straight time rate for their normal 40 hour work week, resulting in this claim for additional compensation.

The Organization argues that the Carrier violated Rule 42(f) by changing the Claimants' starting time more than one hour or creating a new starting time period without re-advertisement, Rule 53(b) by not compensating the Claimants at time and one-half for reporting outside of their regularly assigned working hours, and Rule 56 by requiring the Claimants to suspend their regular tour of duty and report at a changed starting time for the purpose of avoiding overtime payment. The Organization relies upon numerous on property Awards sustaining claims for the overtime rate when the Carrier changed starting times in support of its requested remedy in this case. See Third Division Awards 26518, 26519, 26522, 26523, 27751, 28036, 28151, 28153, 28154, 31949, 31950, and 34181.

The Carrier contends that the provisions of Rule 42 are applicable to permanent changes in the starting time of an advertised position, which did not occur in this case. It asserts that the Carrier has the managerial prerogative to adjust employees' schedules in order to facilitate their participation in a training program without payment of additional compensation, relying upon Second Division Award 8986. The Carrier next argues that the provisions of Rule 53 refer to calls to perform "service" outside of regularly assigned working hours, noting that attending training camp does not constitute performing "work" or "service" within

the meaning and intent of the overtime provisions of the Agreement, citing Public Law Board No. 6369, Award 2; Public Law Board No. 713, Award 40; Public Law Board No. 6312, Award 24; Third Division Awards 7577, 10808, 20707, 20721, 22704, 30047; Second Division Awards 10241, 12234, 12235, 12359, 12367, 12400, 12631, 12637 and 12639. Finally, the Carrier contends that Rule 56 has no application as the Claimants did not commence and get relieved from their normal assignment to avoid overtime. The Carrier points out that the Claimants suffered no loss of compensation as a result of their participation in the three days of training involved, and requests the Board not to create impediments to its efforts to provide necessary training for the mutual benefit of employees and itself.

A careful review of the record convinces the Board that the Organization has not shown that the Carrier violated any of the cited Agreement provisions by temporarily adjusting the Claimants' schedules on May 1, 2 and 3, 2001 to permit them to attend mutually beneficial training and compensating them at the straight time rate for such participation. None of the on-property precedent relied upon by the Organization dealt with a temporary schedule change as a result of a training attendance requirement, which we find to be the case herein. The Carrier did not make a permanent change in the starting time or workweeks of the Claimants' advertised positions, as it did in the cases cited by the Organization. Rather, we find the holdings of Second Division Award 8986 and Public Law Board No. 6369, Award 2, both on-property Awards involving other Organizations, to be more applicable to the fact situation raised herein. In Second Division Award 8986 the Board held that the Carrier can direct employees to adjust their schedule of hours for one week to participate in training without adverse financial consequences. Public Law Board No. 6369, Award 2 dealt with the broad question of whether attendance at mutually beneficial training outside regular working hours was payable at the straight time rate, answering in the affirmative on the basis that it was neither "work" nor "service" under Agreement overtime Rules. In this case the Organization never asserted that the training the Claimants were required to attend was not mutually beneficial, as was the situation in Third Divisions Awards 31949 and 31950 which involved voluntary meetings, not mutually beneficial training. The Board concludes that none of the penalty pay provisions relied upon by the Organization are applicable to the factual situation herein. Accordingly, the claim must fail.

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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 25th day of August 2004.