

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 39360  
Docket No. SG-38411  
08-3-NRAB-00003-040362  
(04-3-362)

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna 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:**

**Claim on behalf of J. P. Rebmann, for ½ pay for 3 hours traveled on Sunday, May 11, 2003, account Carrier violated the current Signalmen’s Agreement, particularly Appendix O (Former Appendix 9B) and Rule 80, when on Sunday, May 11, 2003, one of the Claimant’s rest days, he was required to travel to Salt Lake City, Utah, for signal training school and Carrier only paid him at the straight time rate instead of at the overtime rate. Carrier’s File No. 1368308. General Chairman’s File NO. W-APP9B-304. BRS Case No. 12919-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 relevant facts in this case are not in dispute.

On May 11, 2002, the Claimant, who at all relevant times worked as an Assistant Signalman, was sent to Salt Lake City, Utah, for the purpose of attending a training class. Attendance at this training class was a precondition to attaining the status of a Signalman. Due to the fact that this training facility had a Monday through Friday schedule, it was necessary for the Claimant to travel on a Sunday in order to be in attendance at Monday's class. However, Sunday May 11, 2002 was a designated rest day for the Claimant. He was thereafter paid, at is straight time rate, for all hours traveled between his headquartered location in Pocatello, Idaho, and Salt Lake City, Utah.

On June 5, 2003, the Organization filed the instant claim in which it maintained that the Carrier improperly paid the Claimant. In this regard, the Organization maintains that because the Claimant was required to travel on one of his rest days, he was deprived of the two rest days to which he was entitled. Accordingly, the Organization asserts that pay, at the rate of time and one-half, is required in this case for all time the Claimant spent traveling on May 11, 2002, his rest day.

Following a careful review of the record, with particular attention paid to the cases cited by the Carrier as well as the Organization in support of their respective positions, and for the reasons that follow, we find that the issue before the Board has been litigated by the Organization on prior occasions in the past without success.

Rule 19 – Traveling Pay reads, as follows:

“Time spent traveling from one work point to another outside of regularly assigned hours or on a rest day or holiday will be paid for at the straight time rate.” (Emphasis added)

In Third Division Award 36628, the Board denied the claim of a Claimant who maintained that because he was required to travel outside of his regularly assigned hours in order to attend an FRA Instruction Class, the Carrier was obligated to pay him at his time and one-half rate. During the on-property handling of that case, the Organization conceded the “long standing” practice of pay, at the straight-time rate, for travel time when such travel was affected by some travel medium other than a Company vehicle. In denying the claim, the Board noted:

**“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.”**

**In Public Law Board No. 6459, Award 13, the Claimant sought pay at the time and one-half rate for all time traveling to a Start Up Meeting, where such travel occurred on his assigned rest days. The Board denied the claim, noting in relevant part:**

**“In addition to the mutuality of interest exception which this Board finds to be present in this case, the language of Rule 19 - which is a specifically directed rule - must be considered in our determination. That rule specifically provides for payment of the straight time rate of pay for situations such as found in this case. Therefore, the Board concludes that the straight time rate of pay was proper in this case and the claim as presented is denied.”**

**Finally, the Board finds significant the fact that during the on-property handling of the instant case, the Organization was unable to dispute the historical practice of compensating employees at their straight time rate for travel time that occurs on their rest days for the purpose of attending training sessions. It is clear, therefore, that this long-standing practice, without objection, evinces the Organization’s acquiesce with the Carrier’s position herein.**

**Finally, the Board reviewed Third Division Award 34174 and finds that it does not change the determination made herein. In that case, the Claimant was assigned to a headquartered gang held away from its headquarters post. The Claimant spent nine hours on his assigned rest day traveling from his headquarters point to his designated work location. He was compensated at the straight time rate for all time traveled. In his appeal, the Board granted his claim on the basis that because the Claimant was required to travel on his rest day, he was deprived of the full two rest days to which he was entitled. Without discussing the merits of this particular Award, Award 34174 is easily distinguished. In this regard, unlike the Claimant in Award 34174 who was traveling from one work location to another on his assigned rest day, the Claimant in the instant**

matter was traveling in order to attend a training class. As noted in the case discussions above, training classes have not been considered “work” or “service” due to the mutuality of interest exception. Accordingly, Rule 19 applies, entitling the Claimant to straight time pay for time traveled on his rest day.

In conclusion therefore, we hold that given the factual record before the Board, the Third Division and Public Law Board Awards noted above are controlling precedent and pursuant to the doctrine of collateral estoppel, the instant claims do not merit a sustaining award. There is no evidence in the record that the above Awards, deemed relevant by the Board, are palpably erroneous, thus warranting their rejection by the Board. Given the identity of parties, facts and Rules, the Board finds that the above cited Awards are controlling, and the holdings of each must be followed in the instant matter.

**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 October 2008.