

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40490
Docket No. MW-39539
10-3-NRAB-00003-060324
(06-3-324)**

The Third Division consisted of the regular members and in addition Referee Daniel F. Brent when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier deducted fifty dollars and four cents (\$50.04) from the first half of July 2004 paycheck of Mr. S. Thompson in relation to his paid rest day overtime hours for May 14, 2004 [System File B-M-1242-W/11-04-0225 BNR].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Thompson shall now receive fifty dollars and four cents (\$50.04).”**

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 instant case involves a dispute as to whether the Claimant is entitled to overtime versus straight time for his attendance at a mandatory technical school conducted on his regular rest day. The Carrier contends that training is distinguishable from work assignments and thus, hours spent participating even in mandatory training should not count towards the hours for computation of entitlement to overtime wage benefits. The Carrier argued that nothing in the Rules Agreement requires payment of overtime for attending such training.

The Organization contends that applicable decisions, particularly those issued in cases arising on the Third Division, treat mandatory attendance at training sessions as requiring payment for time spent working to the Carrier's benefit on scheduled rest days.

The parties each cited Awards supporting their position. When failure to attend training renders an employee vulnerable to discipline, the mandatory nature of the Carrier's assignment becomes self-evident. Unless the evidentiary record firmly established that a widespread practice of not counting such attendance, which cannot reasonably be construed as voluntary as employees must attend to maintain their status as qualified employees, the hours spent in training should count toward computation of straight time and, therefore, overtime wages. As Arbitrator Joseph Sickles wrote in Third Division Award 20323 ". . . numerous Awards rendered by a number of Referees have consistently determined that mandatory attendance at classes such as those in issue in this dispute do not constitute 'work, time or service' so as to require compensation under the various Agreements. Because of the consistent holdings of prior Referees, we are reluctant to overturn the multitude of Awards." However, the more persuasive citation was made by the Organization to Rule K, which provides for payment when a bargaining unit employee is held "on duty on rest days." When training that is necessary to maintain certification or current eligibility for the employee's current assignment or training that the Carrier has mandated interferes with scheduled rest days that the Carrier has elected not to reschedule so that the training could occur on scheduled work days, the Carrier incurs the liability to pay for these days under the Agreement, because the evidentiary record does not establish persuasively a clear and consistent practice of not paying employees the appropriate applicable wage rate for mandatory training that the Carrier has scheduled on the employee's

rest day or regular day off. The Carrier may avert such liability be either rescheduling the training or the rest day.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 15th day of June 2010.