

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40602
Docket No. SG-40607
10-3-NRAB-00003-080455**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 E. M. Webb, for 15 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 7, 8, 13 and 15, when it required the Claimant to perform service outside his regular assigned hours on February 27 and 28, 2007 then failed to compensate him as required by the Agreement. Carrier’s File No. 1472766. General Chairman’s File No. N 15 671. BRS File Case No. 13967-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 is assigned to the Signal Department and works a 2:30 P.M. to 10:30 P.M. shift. This claim protests the failure of the Carrier to compensate the Claimant at the time and one-half rate of pay for his attendance at a required Rules training class outside of his assigned work hours on February 27 and 28, 2007. The Organization relies on Rules 5 (40-Hour Work Week) 7 (Shifts) 8 (Change of Shift) 13 (Overtime) and 15 (Calls) of the Agreement in support of the Claimant's entitlement to the overtime pay rate. It involves the same type of training classes given by the Carrier's Safety Supervisors as part of the annual start-up that was dealt with by the Board in Third Division Awards 40599 and 40600 as well as identical arguments of the Organization and the Carrier set forth therein. They are incorporated by reference in this Award.

Initially, we are unable to accept the Organization's procedural assertion that the Carrier's reference to a different Claimant's name in its August 14, 2007 denial constitutes a fatal error requiring that the claim be sustained. The Carrier's submission of the record to the Board does not contain this error, i.e., only the Organization's record does. Based upon the multitude of similar claims being filed by the Organization at the same time, involving the parties' identical arguments, any confusion related to record-keeping made by the Organization (and/or the Carrier) is understandable, was inadvertent, and did not mislead the Organization in any manner as to the Carrier's position in this matter. A perusal of the record in Third Division Award 40601 where this argument was also made, shows that the two August 14, 2007 denials were apparently switched and placed in the wrong case file.

A careful review of the record convinces the Board that this claim (like the ones in Third Division Awards 40600 and 40601 is governed by the holding and rationale in Award 40599 as well as the principle of stare decisis confirming the application of the mutuality of benefit exception to the "work or service" rule to classes on Operating or Safety Rules that occurred in this case. See Public Law Board No. 6459, Awards 12, 13, 26 and 35 and Third Division Awards 36628 and 39360. Thus, no violation of Rules 5, 13 or 15 has been established. Similarly, the finding that the Organization failed to sustain its burden of proving that the Claimant's shift times were changed in order for him to attend his training class, a prerequisite to a finding of entitlement to time and one-half pay under Rules 7 and 8, is equally applicable herein. Because the record makes clear that Claimant was

paid the straight time rate of pay for his attendance at the training classes, as well as for the work he performed on the claim dates, with total work hours not in excess of 40 that week, the claim for additional compensation must be denied.

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 27th day of August 2010.