

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40605
Docket No. SG-40610
10-3-NRAB-00003-080458**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(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 S. A. Brubaker, T. J. Butler, J. J. Gutierrez and S. A. Kusanovich, for the time Claimants were required to suspend their 10 hour days on March 14 and 15, 2007, as a consequence, Carrier should now be required to compensate the Claimants for the additional two hours as defined in Rule 36. The Claimants are also entitled to the additional half-time time for March 12 through 16, 2007, for all time worked as provided in Rules 5, 18 and 36 of the current CBA. The Claimants were off of their zone as described in Rule 36. Also Rule 5 requires the additional half-time for rest day they were required to perform service; and Rule 18 requires that all employees riding in or operating a company vehicle is considered as working. The common Lodging is the Claimants’ headquarters point and they were required to travel on March 16, 2007 a total of three and one-half hours and five and one-half hours on March 17, 2007, on their rest day to be returned to their headquarters point. Carrier should now be required to compensate the Claimants for the additional four hours for March 14 and 15, 2007 when it required the Claimants to work eight hours instead of their assigned ten hour days. Carrier should also compensate the Claimants the additional 57 hours and 30 minutes of half time from March 12, 2007 until March 17, 2007 when they were released from duty as a result of being off zone, performing service on their rest days and traveling in a company vehicle and being responsible for company tools and equipment on their assigned rest

days, account Carrier violated the current Signalmen's Agreement, particularly Rules 5, 6, 17, 36 and 80, when it required the Claimants to attend Start-Up meetings off of their assigned Zone from March 11, 2007 until they were released on March 17, 2007 and failed to compensate them as required by the Agreement. Carrier's File No. 1472785. General Chairman's File No. UPGCW-5-1451. BRS File Case No. 13990-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 Claimants were members of Signal Gang No. 7035, which was working a compressed work schedule consisting of eight ten-hour days with six days off. During the relevant period the Claimants' were scheduled to work from March 6 - 13, 2007, with rest days from March 14 - 19, 2007. The Claimants were required to attend Start-Up training from March 12 - 16, 2007 in Las Vegas, which is outside of their work zone. They received straight time pay for ten hours on March 11, 12, and 13; for eight hours on March 14 and 15; for 12 hours on March 16; for five and one-half hours on March 17 (which included travel time) on their rest days on March 18 and 19; and received ten hours at the straight time rate on March 20 and 21 when they were not working. This claim protests the failure of the Carrier to compensate the Claimants (1) at their time and one-half rates of pay for their attendance at the training classes from March 12 through 16, 2007 (2) an additional two hours on March 14 and 15 because they were paid for eight hours rather than the ten hours they would have worked and (3) at the time and one-half rate for travel time to and from the training because they were riding in a company truck. The Organization relies on Rules 5 (40-Hour Work Week) 6 (Established Hours and Days) 17 (Road Service (Not Held Out Overnight) 36

(Traveling Gang Work) and 80 (Loss of Earnings) of the Agreement in support of Claimants' entitlement to the additional compensation sought.

The Organization argues that the training involved was not mutually beneficial, and that, at most, only one of the days was used for the Rules examination, so that it must be considered "work or service" entitling the Claimants to the time and one-half pay rate for rest days under Rule 5(J)(1) and work days off of their zone under Rule 36, which must be applied as written, citing Third Division Awards 12632, 16573, 18287, 19158, 19695, 20687 and 21911. The Organization contends that the Carrier rarely scheduled training during rest days in the past, which it is doing more frequently, and that when it did, it compensated employees at the time and one-half rate, indicating the intent of those provisions, relying on Third Division Awards 13229, 28214 and 31424. The Organization notes that Rules 17 and 18 state that employees operating Company trucks while traveling - which the Claimants were doing in this case - will be considered as performing work. It asserts that the Claimants are entitled to an additional two hours' pay on March 14 and 15 under Rule 6 because their regular work schedule was changed from ten to eight hours. Finally, the Organization maintains that the Claimants were required to travel back and forth on March 16 and 17, because no available lodging was provided, and that this additional travel time must be similarly compensated at the time and one-half rate.

The Carrier asserts that regardless of the cited Rule, this claim is governed by the fact that these Start-Up training classes have been found to be mutually beneficial and not considered "work or service" as those terms are defined in the Agreement that requires overtime payment, citing Public Law Board No. 6459, Award 12, as well as Third Division Awards 20323, 36628 and 36859. It posits that training time, and travel incident to attending training classes, are, and have always been, paid at the straight time rate, citing Second Division Award 7370. Because all cited Rules relate to times when employees are performing either work or service, the Carrier contends that they do not support entitlement to additional compensation. It notes that the Claimants' regularly assigned work hours were not reduced under Rule 6, and Rules 17 and 18 are inapposite, both because they apply only when employees are performing work or service, and only to headquartered gangs, not mobiles gangs with no home station, which was the situation with these Claimants.

A careful review of the record convinces the Board that the pivotal issue in this case is whether the Start-Up training that the Claimants were required to attend off zone in March 2007 was mutually beneficial. That determination is governed by the

holding and rationale in Third Division 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 Start-Up training and 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, 17, 18 or 36 has been established. The Organization also failed to sustain its burden to prove that the Claimants’ regularly established daily work hours were changed, because they were paid for ten hours on March 11, 12 and 13, i.e., dates within their work cycle. The fact that the Claimants were driving Company trucks does not bring them within the confines of Rules 17 or 18 (which also requires that they perform service) because they are mobile gangs without a home station. Additionally, those Rules provide for travel time compensation at the straight time rate. Because there is no contention that the Claimants were not paid their straight time rates of pay for their attendance at the training classes, as well as for their travel time on the claim dates, their 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.