

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40628
Docket No. SG-39150
10-3-NRAB-00003-050624
(05-3-624)**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of J. M. Gartside, for four hours each day for May 3 and 4, 2004, at his half-time rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 28, when the Claimant worked in excess of 40 hours on his regular assignment and Carrier failed to pay the time and one-half rate required by Rule 28. Carrier’s File No. NEC-BRS(S)-SD-1050. General Chairman’s File No. JY3210107-180-412. BRS File Case No. 13380-NRPC(S).”

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's work assignment was Sunday, 7:00 A.M. to 3:00 P.M.; Monday and Tuesday, 3:00 P.M. to 11:00 P.M.; Wednesday and Thursday 11:00 P.M. to 7:00 A.M.; with rest days of Friday and Saturday. On Monday, May 3 and Tuesday, May 4, 2004, the Claimant attended training at the Engineering Department Training Camp from 7:00 A.M. to 3:00 P.M. Subsequent to the eight hours of training, the Claimant returned to his assignment and worked the first half of his normal assignment or four hours from 3:00 P.M. to 7:00 P.M. on each day.

The Organization argues that on both May 3 and 4, 2004, the Claimant worked four hours of his normal assignment over the eight hours he had been compensated at his straight time rate of pay. Rule 28 states that work in excess of 40 straight time hours is paid at the overtime rate and the Carrier's failure violated Rule 28 of the Agreement. As argued by the Organization, the Carrier moved his hours for training and then when the Claimant worked his normal tour, the Carrier paid him at the straight time rate, while any other employee would have been paid at the overtime rate of pay. The Claimant worked more than 40 hours a week and in excess of eight hours per day on both days. The Organization argues that he is entitled to overtime for working his assignment.

The Carrier points directly to Public Law Board No. 6369, Award 2 and argues that time spent in training is not considered "work" under Rule 28. The Claimant was paid for work performed on Sunday, Wednesday, and Thursday for Claimant's regular duty and for four extra hours of his shift on Monday and Tuesday that he opted to work his normal assignment. The Claimant was additionally compensated for Monday and Tuesday at the straight time rate of pay for attending Engineering Department Training Camp. Because time in training is not work, the Claimant was not entitled to additional compensation.

The Board notes that the Organization does not agree that Public Law Board No. 6369 addresses this issue. The Board disagrees. The issue at bar is directly covered by that Award and applicable to these facts, as Rule 28 – Overtime Hours addresses time worked in excess of 40 hours. The Award held that training is not "work" and based on the "mutuality of interest" principle shall not be paid at the

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overtime rate of pay. While differences in circumstances certainly exist between these instant facts and those of other cases, the Board will follow the logic cited therein.

Accordingly, the time spent in training is not “work” under Rule 28 of the Agreement and, therefore, the Claimant’s overtime rights are not generated by the instant set of facts. The Board further notes that Public Law Board No. 6369, Award 2 is directly applicable in that it was decided on this property and between these same parties. The claim must be denied (Third Division Awards 37182, 37183, and 37184).

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.