

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41628
Docket No. SG-41645
13-3-NRAB-00003-080577

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**
(**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. D. Wyatt, for seven hours of half-time pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 7, 13 and 15, when it required the Claimant to perform service outside her regular shift on May 24, 2007 and then required her to fill her regular shift with no compensation for overtime. Carrier’s File No. 1478621. General Chairman’s File No. N 7 686. BRS File Case No. 14049-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 alleged to be due overtime because she attended an Overlap Meeting on May 24, 2007, which was outside of her assigned 2:30 P.M. to 10:30 P.M. shift. Instead of her normal assignment, the Claimant reported for the meeting at 10:30 A.M. and continued to work until 8:30 P.M. Accordingly, in violation of the Agreement, the Claimant performed work that was outside of the five days per week, eight hour assignment (Rule 5) with a changed starting time (Rule 7) and without paying the appropriate overtime rate (Rule 13). The Carrier's payment at the straight time rate in requiring the Claimant to attend the Overlap Meeting violated the Agreement. The Organization directs the Board's attention to Third Division Award 21911, which identified the central focus of this dispute and reached a supporting conclusion for the Organization. That Award noted that:

"The crux of this dispute is whether or not the attendance at the classes may be construed to be for the primary benefit of the employees, for the mutual benefit of Carrier and the employees or for the primary benefit of Carrier."

Award 21911 concluded that the classes were for the primary benefit of the Carrier and sustained the Organization's claim.

The Carrier denies any Agreement violation. It contends that Rule 7 does not apply because the Claimant's starting time was not changed; the Claimant attended a training class and started later than usual to work her assignment. Nor did Rule 5 apply because the Claimant did not perform "work" during the class that she attended. In fact, none of the Rules cited were applicable because the Overlap Meeting was appropriately called to provide needed information and training to perform her assignment. As such, Third Division Award 21911 was not applicable; a long list of Awards have found that such classes were neither "work" nor "service" as related to the Rules alleged violated, but instead were mutually beneficial to both the employee and the Carrier (Third Division Awards 33836, 39360, 40599, 45600; Public Law Board No. 6549, Award 13).

The Board closely studied the record at bar. The crux of this matter is whether the Claimant's attendance constituted "work" or "service" as defined by the

Agreement. In this instance, the Organization has the burden to prove applicability to these facts. The Board has found no proof that the Claimant performed any “work” or “service.” We reviewed the start time, as well as the full record of on-property evidence. The Carrier rebutted with clear documentation to support its contention that the meeting covered knowledge necessary to safely perform the Claimant’s job on the territory of her position. The Organization provided no evidence to document its contention that the Claimant actually performed any tangible “service” or “work” during the times disputed. Under these circumstances, the Board must conclude that the Agreement was not violated as supported by the numerous Awards cited above. The Carrier properly compensated the Claimant at the straight time rate of pay. Accordingly, the claim 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 24th day of April 2013.