

Award No. 11567

Docket No. SG-11147

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

MISSOURI PACIFIC RAILROAD COMPANY — GULF DISTRICT

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company (Gulf District) that:

(a) Signal Maintainer H. C. Barnett, with headquarters at Bryan, Texas, be paid for eight hours at the time and one-half rate for the time traveling from Bryan, Texas, to Palestine, Texas, attending a rules re-examination class and returning to Bryan, Texas, on Saturday, March 8, 1958. [Carrier's File: BRSA 2-58]

EMPLOYEES' STATEMENT OF FACTS: Mr. H. C. Barnett is a regularly assigned Signal Maintainer with headquarters at Bryan, Texas. Signal Maintainer Barnett's regularly assigned work week is Monday through Friday and his regular rest days are Saturday and Sunday.

On February 24, 1958, the Carrier issued a letter to all Signalmen and various other employees of other crafts stating that a "Rules class for re-examination on Rules And Regulations For the Maintenance of Way and Structures" would be held in Palestine, Texas, beginning at 9:00 A. M., Saturday, March 8, 1958. A copy of this letter is reproduced herewith for ready reference by the Board:

"Palestine, Texas, February 24, 1958

ALL MAINTENANCE OF WAY FOREMEN

ALL ROADWAY MACHINE OPERATORS

ALL RAIL REPAIRMEN

ALL MOTOR CAR OPERATORS

ALL SIGNALMEN

Rules class for re-examination on Rules And Regulations For The Maintenance Of Way And Structures will be held in the Roadmaster's office, San Antonio, beginning 8:00 o'clock A. M., Saturday, March 1, 1958.

"Whether or not we feel that appropriating an employe's time in this manner, absent of course a specific rule, is fair or just is not for us to say for this Board does not sit as a court of equity. We are limited to interpreting the applicable Agreement provisions as they stand. It would be exceeding our statutory function to allow compensation where the Agreement itself does not authorize it. We do not believe it to be the prerogative of this Board to attempt to do so by reading into the rules something that is not there. We feel that the employe's recourse is to negotiate with the Carrier under Section 6 of the Railway Labor Act."

Consistent with the findings in above Award 7577 your Board denied a similar claim in Award 7631 in which your Board had the following to say:

"However advisable or justified a Rule providing payment for time spent as here, we are unable to find that attendance at the classes in question was either 'work' or 'service' within the meaning of the effective agreement. This Board has consistently held in its awards, the latest being Award 7577, that claims of the type here present are without merit.

Suffice to say this Board has no right to promulgate new rules; its authority is limited to the interpretation of existing rules."

In the absence of any provisions in the agreement authorizing or requiring payment as here claimed, and consistent with the holdings of your Board in previous similar cases, *supra*, it is the position of Carrier that the instant claim should be denied.

The substance of matters contained herein has been the subject of discussion in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. The Claimant, Signal Maintainer H. C. Barnett claims pay for 8 hours at time and one-half, when he traveled from Bryan, Texas to Palestine, Texas, for the purpose of attending a rules re-examination class, returning to Bryan, Texas on the same day. The Organization takes the position that the Petitioner was required to perform work by taking the rules re-examination, and therefore is entitled to compensation pursuant to Rule 3, which provides for a 5 day workweek, and Rule 5, which provides that work in excess of 4 straight time hours shall be paid for at time and a half.

Rule 29 provides that employes re-examinations will be given at times set by the Carrier so as to cause the least inconvenience to employes, and, when reasonably possible, during regular working hours. In the instant case, the Carrier posted a notice to all Maintenance of Way foremen, all road machine operators, all rail repairmen, all motor car operators, and all signalmen, scheduling a rules class re-examination on 2 dates, one at San Antonio, Texas, on Saturday, March 1, 1958, and one at Palestine, Texas on Saturday, March 8, 1958. There is no showing by the Petitioners that such scheduling was other than normal, or that it was possible, in the accommodation of those concerned, to do it other than on Saturday, which was the Petitioner's free day.

Awards of this Division have consistently held (see Awards 7577, 773, 10073 and 7631) that attendance at rules re-examinations, in the absense of

a specific provision, in the Agreement, shall not be considered work, and allowance for compensation shall not be made. The Petitioners have failed to carry the burden of proof that any different conclusion should be reached here. An examination of Rule 29 indicates that the Carrier has complied with its provisions, and therefore the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.

LABOR MEMBER'S DISSENT TO AWARD 11567 **DOCKET SG-11147**

The majority, in Award 11567, have, in effect, written a part of a rule out of the parties' agreement. It is quite clear in the record that the Carrier made no effort to hold the rules re-examination during regular working hours as required when reasonably possible.

There is no precedent value in the awards cited by the majority because of the absence of a similar agreement rule making examinations, re-examinations, etc. proper matters for regular work hours.

Award 11567 is in error; therefore, I dissent.

W. W. Altus