

Award No. 14181
Docket No. MW-14194

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it required the employees named in Part (2) of this claim to attend rules classes (instructions on and discussion of new Carrier rules) on either March 17 or 24, 1962 and refused to compensate said employees for such time consumed in the Carrier's service and, as a consequence thereof—

(2) Each of the following named claimants be allowed pay at his respective time and one-half rate for the number of hours indicated after each respective name.

NAME	CLASSIFICATION	DATE	NUMBER OF HOURS
J. W. Taylor	Pipe Gang Foreman	3-17-62	4
J. J. Sheffield	Bridge Gang Foreman	3-17-62	8 (160 miles)
G. L. Russell	Bridge Gang Foreman	3-24-62	4
R. M. Long	Carpenter Gang Foreman	3-24-62	6 (108 miles)
J. A. Bateman	Carpenter	3-24-62	4
D. L. Pellicer	Carpenter	3-24-62	4
C. R. Yelvington	Carpenter	3-24-62	4
C. G. Lampp	Machine Operator	3-17-62	4
O. H. Bennett	Machine Operator	3-24-62	4
L. V. Langsten	Extra Gang Foreman	3-24-62	6 (56 miles)
Wilmer Scott	Machine Operator	3-24-62	9 (60 miles)
E. E. Green	Machine Operator	3-24-62	4
J. M. Skinner	Extra Gang Foreman	3-24-62	4
C. A. Beaver	Assistant Foreman	3-24-62	4
G. M. Taylor	Multiple Tamper Operator	3-24-62	4
O. Nipper	Multiple Tamper Operator	3-24-62	6 (80 miles)
J. W. Lloyd	Machine Operator	3-17-62	6
C. Hall	Assistant Foreman	3-24-62	4
C. E. Red	Machine Operator	3-24-62	5 (50 miles)
S. Simpson	Machine Operator	3-17-62	8 (260 miles)
D. H. Holder	Machine Operator	3-24-62	11 (80 miles)

NAME	CLASSIFICATION	DATE	NUMBER OF HOURS
R. D. Beville	Machine Operator	3-17-62	6 (50 miles)
A. L. Hutchinson	Machine Operator	3-17-62	6 (30 miles)
A. O. Merritt	Machine Operator	3-17-62	6 (60 miles)
Doyle Rouse	Extra Gang Foreman	3-17-62	11 (236 miles)
C. B. Rouse	Section Foreman	3-17-62	11 (236 miles)
Howell Peavy	Section Foreman	3-24-62	4
A. B. Langham	Section Foreman	3-24-62	4
A. L. Wood	Section Foreman	3-24-62	8 (200 miles)
G. E. Handley	Section Foreman	3-24-62	5 (12 miles)
E. C. Stokes	Asst. Section Foreman	3-24-62	5 (12 miles)
C. E. Jordan	Extra Gang Foreman	3-24-62	5 (12 miles)
J. V. Dobbs	Assistant Foreman	3-24-62	11 (236 miles)
Wilmer Scott	Asst. Section Foreman	3-24-62	6 (80 miles)
J. R. Devinney	Asst. Section Foreman	3-24-62	5 (12 miles)
Robert Ming	Section Foreman	3-24-62	8 (120 miles)
C. A. Dorr	Machine Operator	3-24-62	6 (80 miles)
L. G. Blackwell	Welder	3-17-62	4
B. H. Hobenstein	Welder	3-17-62	4
H. R. Russ	Machine Operator	3-17-62	9 (200 miles)
L. M. Stevens	Section Foreman	3-17-62	9 (240 miles)
E. V. Fretwell	Asst. Section Foreman	3-17-62	4
L. A. Matusick	Section Foreman	3-17-62	4
LaRue Harvey	Asst. Ex. Gang Foreman	3-17-62	5 (60 miles)
G. A. Durrance	Machine Operator	3-17-62	4
R. T. Hilliard	Extra Gang Foreman	3-17-62	8 (160 miles)
J. P. Brown	Machine Operator	3-17-62	10 (278 miles)
E. H. Griner	Section Foreman	3-24-62	4 (This em- ployee was in hospital in St. Augustine, but was instructed by Carrier to leave hospital and attend classes in St. Augustine on March 24, after which he returned to the hospital.)

EMPLOYEES' STATEMENT OF FACTS: The Carrier issued instructions reading:

"FLORIDA EAST COAST RAILWAY COMPANY
St. Augustine, Florida
March 6, 1962

File 567-1

TRANSPORTATION RULE BOOK: Operating Rules effective April 1, 1962.

TO ALL CONCERNED:

A new issue of Operating Rules will become effective April 1, 1962. This issue will supersede the Book of Rules of Transportation Department effective December 1, 1923, Automatic and Interlocking Signal Rules dated March 1, 1926; Rules and Instructions Governing the Terminal Test, Operation and Train Handling of Air Brake, Air Signal and Train line Steam Equipment on Locomotive Cars, effective July 1, 1945, and all bulletins, or other instructions inconsistent therewith.

It will be necessary that all Engineering Department employees in any way concerned with the operation of trains attend one of the

amination, even though, as here, it is a biennial affair. Carried to its logical conclusion, that view would entitle employees to pay for time and effort spent in learning rules.

In Award 487, the Third Division, with Referee Arthur M. Millard, stated:

"There is no doubt but that some inconvenience and sacrifice of time was occasioned the claimants by the requirements of the carrier and the examination of the employers to determine their familiarity with the Book of Rules and Regulations of the Operating Department; at the same time such examination was as much to the advantage of the employees as to the carrier, inasmuch as it constituted a means of certifying or re-certifying the employees to the requirements of the positions of responsibility they held with the carrier."

Also see Awards Nos. 2508, 2828, 3302 and 4181 of the Third Division.

In Award 3150, the Second Division of the National Railroad Adjustment Board expressed the following fundamental principle pertinent to this dispute:

"We have consistently held that employees required to take tests are not performing work or service under the rules. Even though they are inconvenienced thereby we cannot sustain a pay claim in the absence of a rule providing compensation for time so spent." (Emphasis ours.)

Also see First Division Awards Nos. 3182, 5213, 5464, 6263, 6846, 7663, 12206, 13913, 15035, 17382, 188110 and 19003.

For the reasons stated the claims are without merit and should be denied.

OPINION OF BOARD: The issue is whether the Carrier violated Rule 19 of the Agreement which reads as follows:

"Employees notified or called for service outside of and not following and continuous with established hours will be paid for such service at time and one-half rate, with a minimum of two (2) hours at time and one-half rate."

Employees argue that pay for "service" as provided in Rule 19 is additional time beyond any "work" which an employee may perform when so called. It is service other than manual labor. Thus, Claimants performed "service" when they were required and did attend classes for instruction and discussion of Carrier's Operating Rules on their rest days.

The record shows that new Operating Rules were to become effective April 1, 1962. These would supersede Rules which became effective December 1, 1923; those dated March 1, 1926; those which became effective July 1, 1945. Carrier instructed Claimants and all other Engineering Department employees to attend classes on any of three designated Saturdays prior to April 1, 1962, for the purpose of instruction and discussion of the new rules.

There are many Awards of this Division dealing with the subject at hand. Each, however, must be considered on the basis of the facts and the Rules pertinent to the dispute.

Award 7577 is particularly relevant to the issue raised by the Employees. The Rule which was applicable in that case provided as follows:

"A regularly assigned train dispatcher who is required to perform service on the rest days assigned to his position will be paid at the rate of time and one-half for service performed on either or both of such rest days." (Emphasis ours).

There, too, the Employees contended that the Claimants "rendered service for the benefit of the Carrier in accordance with Carrier's instructions during hours other than those within their respective regular assignments". We held that attending rules re-examination classes is not "work" or "service" justifying a claim for pay under that Rule.

The required attendance for instruction in the new Operating Rules was for the mutual benefit of both the Claimants and the Carrier. It was essential to the efficient and safe operation of the railroad. In this respect such attendance was also in the nature of a re-examination to keep the employees qualified for their positions.

In Award 4250 we said:

"It has been held, and we think correctly so, that employees qualifying themselves for positions and keeping themselves qualified and to achieve promotion, are serving themselves primarily."

In that case, as here, the claimant attended a meeting to acquaint himself with new operating rules.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier did not violate the Agreement.

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 February 1966.