

Award No. 15630
Docket No. CL-16005

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5912) that:

(1) The Carrier violated the terms of the Agreement between the parties when it refused to properly compensate five claimants at Fort Worth, Texas, for service performed before and after their assigned hours and on rest days, at the Carrier's request, on December 16, 1964.

(2) The Carrier shall now be required to pay the following named Claimants on an overtime basis, as specified below:

Claimant	Position	Rate of Pay	Overtime Due
G. W. Parrott	Chief Yard Clerk-		
	Warehouse Foreman	\$22.07	6 hrs.
C. H. Wyatt	Car Clerk	\$20.93	4 hrs. 30 min.
C. B. Rogers	Car Clerk	\$20.93	6 hrs.
P. E. Dial	Car Clerk (Rest Day)	\$20.93	6 hrs.
R. A. Cappleman	Bill Clerk	\$21.11	4 hrs. 30 min.

EMPLOYEES' STATEMENT OF FACTS: At 12:01 A.M. on January 1, 1965, the Carrier inaugurated a new system of communications facilities called Management Information Control System, or MICS. The new system permits each day's activities in connection with car and freight movements to be brought into a central point, Springfield, Missouri, by wire promptly. The detailed information transmitted from throughout the system is then processed on electric computers during the night and the information is made available the following morning for patrons of the Carrier, car distributors, traffic departments and management.

Some two weeks prior to the January 1, 1965 inauguration date of the new MICS System, or on December 14, 1964, a notice was given to the employees at Fort Worth, Texas, reading as follows:

"Fort Worth
December 14, 1964

N-O-T-I-C-E

Yard Clerks:

There will be an instruction class describing MICS at Fairway Cross Keys Steak House, 4800 Camp Bowie Blvd., beginning at 4:00 P.M., December 16.

It is desired each of you attend this class.

/s/ J. B. Carson

(Bring Manuals with you)"

Each claimant was in attendance at the instruction class meeting which started on schedule at 4:00 P.M. and stopped at 9:55 P.M. The group met for five hours and fifty-five minutes. The class broke, however, from 7:00 P.M. to 8:00 P.M., one hour, for refreshments and dinner. The expense of the meal and refreshments was paid by the Carrier.

OPINION OF BOARD: The Carrier initiated a new system-wide program identified as "Management, Information, Control System." This system was installed to provide quick and accurate data on car and freight movements from the Carrier's stations and yards through the Carrier's electronic computer for patrons and other interested personnel. A manual of instructions was issued to each station and yard employee well in advance of the installation date, describing in detail the procedures necessary to carry out the program. The affected employees were urged to study carefully and comply with the instructions. It became apparent in a relatively short period of time that the employees did not understand the instructions. On December 16, 1964, each claimant was invited to attend an instruction class describing MICS. The class started at 4:00 P.M., and ended at 9:55 P.M. The class recessed from 7:00 P.M. to 8:00 P.M., one hour for refreshments and dinner. The expense of the meal and refreshments was paid by the Carrier. The Organization relies principally on Rule 43, captioned "Overtime", with respect to all claimants except one, for whom they process this claim as a violation of Rule 44, captioned "Notified or Called", because claimant attended the instruction class on his rest day.

The words contained in the notice to the claimants relative to the class of instructions "it is desired each of you attend this class", while not mandatory in tone, certainly carried with it an aura of compulsion by the mere fact that it was signed by someone in authority. However that may be, whether it could be characterized as compulsory or volitional is immaterial to the issue at hand. Cases have been presented to this Board numerous times wherein employees were required to attend classes of instructions covering a variety of subjects over and above their regular working hours. Carrier points to these cases which have supported its position in requiring attendance of classes for instructions, etc.

The Organization has consistently maintained that the class of instruction was primarily for the benefit of the Carrier; hence, the Carrier should compensate the claimants for the time involved. Further that the simple fact of class attendance constituted either "work" or "service" as these

words are used in the appropriate rules. The Carrier, on the other hand, contends that there are no provisions of the rules authorizing the payments requested, and further emphasize their position by stating that the instruction was primarily for the benefit of the employees.

We conclude by stating that the issue presented essentially is whether this did in fact constitute "work" or "service" as those words are used in the rules. We need not be decisive on the issue of whether the class was for the primarily benefit of the employe or Carrier. In passing we are inclined to think there was a mutuality of interest and benefit. Attendance at classes, whether for examination of rules or MICS, involves the same issue. We agree with Awards 4250 (Carter), 7577 (Shugrue) and 7631 (Smith), inter alia. We cannot agree that attending instruction classes is "work" or "service" referred to in the rules, which would enable us to sustain a claim for overtime. Regardless of what our predilections or sense of equity may be on the subject, in the absence of a specific rule, we are forced to enter a denial in this case.

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 16th day of June 1967.

LABOR MEMBER'S DISSENT TO AWARD 15630, DOCKET CL-16005

Since adoption of the Thirteenth Amendment to the Constitution of the United States, involuntary servitude has generally not been condoned. Likewise, since adoption of Award 2223, on June 29, 1943, Carriers have generally not been permitted to command the time of an employe and not pay him therefor.

Under identical or very similar circumstances, as were here involved, this Board has held in the preponderance of cases that the employe did perform "work" or service." A good example is Award 10062 (Daly) which dealt with a similar situation and discussed the dictionary definition of the word "service." A majority of Referees faced with such an issue have either shared or specifically adopted the opinion expressed in Award 3462, i.e., " * * * the Carrier took Claimant's time for its own use and benefit and in the furtherance of its own business * * *." Yet, there are enough contrary awards so that a Referee's predilections can be supported thereby and he can, as here, using the editorial "we", write that " * * * We cannot agree that attending instruction classes is 'work' or 'service' referred to in the rules, which would enable us to sustain a claim for overtime. * * *"

Unfortunately, actions of this Referee, as set out in Robert F. Kennedy's book, "The Enemy Within", simply do not offer any evidence to indicate that he can control his predilections when interposed as a "neutral" between "Labor" and "Management." And so it is that a preponderance of awards in favor of the Employes; "right"; and rule support, are simply not enough to outweigh the predilection of this particular Referee and I therefore dissent.

D. E. Watkins
Labor Member
7-7-67

CARRIER MEMBERS' ANSWERS TO DISSENTS TO AWARDS 15628, 15629 AND 15630

These awards are correct both in the evaluation of the facts and the application of rules. The Dissenter had the opportunity, both in panel and by brief, to convince the Referee of the soundness of his position and nothing he has now said in his dissents detracts from the awards.

It is our understanding that the purpose of a dissent is to show where an award is in error; however, it is obvious that the Dissenter is using the dissent for a purpose other than intended.

J. R. Mathieu
R. A. DeRossett
W. B. Jones
C. H. Manoogian
W. M. Roberts