NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20707
THIRD DIVISION Docket Number TD-20629

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

CLAIM #1 - DI-4(c) 6/22/72

(a) The Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the effective Agreement between the parties, Articles 2(b), 2(e) or 3(b) thereof in particular, when it failed and refused to compensate the respective Claimant Train Dispatchers the difference between pro-rata and time and one-half rate of pay claimed when required to work or perform service for the length of time on the dates indicated below:

Claimants	Length of Time	Dates	Article Violated
D. R. Merchant	10 hours	3-7-72	3(b)
R. J. Smith	9 hours	3-7-72	3(b)
L. H. Treichel	9 hours	3-7-72	3(b)
N. C. Legato	10 hours	3-8-72	3(b)
C. C. Hay	9 hours	3-8-72	3(b)
H. J. Weer	2 hours	3-8-72	2(b)
T. Barrow	1 hour	3-8-72	2(b)
F. E. Putnam	9 hours	3-9-72	3(b)
R. J. Hull	9 hours	3-9-72	2(e)

(b) Because of said violations, the Carrier shall now be required to compensate the respective Claimants the difference between pro-rata and time and one-half rate of pay claimed for the length of time on the dates indicated in paragraph (a) above.

CLAIM #2 - DI-4(c) 8/18/72

(a) The Burlington Northern Inc. (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, Articles 2(b) or 3(b) thereof in particular, when it failed and refused to compensate the respective Claimant Train Dispatchers the difference between pro-rata and time and one-half rate of pay claimed when required to work or perform service for the length of time on the dates indicated below:

Claimants	Length of Time	Dates	Article Violated
G. J. Longbottom	8 hours	6-8-72	3(b)
G. W. Fleming	4 hours	6-6-72	2(b)
G. W. Fleming	4 hours	6-7-72	2(b)
F.O. Schuster	8 hours	6-6-72	3(b)
J. A. Bryson	8 hours	6-6-72	3(b)
R. E. Stickel	8 hours	6-8-72	3(b)
G. Frisina	4 hours	6-6-72	2(b)
G. Frisiana	4 hours	6-7-72	2(b)
H. E. Stimson	4 hours	6-6-72	2(b)
H. E. Stimson	4 hours	6-7-72	2(b)
R. L. Johnston	4 hours	6-6-72	2(b)
R. L. Johnston	4 hours	6-7-72	2(b)
H. E. Ratcliff	4 hours	6-8-72	2(b)
H. E. Ratcliff	4 hours	6-9-72	2(b)

(b) Because of said violations, the Carrier shall now be required to compensate the respective Claimants the difference between pro-rata and time and one-half rate of pay claimed for the length of time on the dates indicated in paragraph (a) immediately above.

CLAIM-#3 - DI-4(c) 10/2/72

(a) The Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the effective Agreement between the parties, Articles 2(b) or 3(b) thereof in particular, when it failed and refused to compensate the respective Claimant Train Dispatchers the difference between pro-rata and time and one-half rate of pay claimed when required to work or perform service for the length of time on the dates indicated below

Claimants	Length of Time	Dates	Article Violated
D. R. Merchant	8 hours	6-19-72	3(b)
C. C. Hay	8 hours	6-19-72	2(b)
R. J. Smith	8 hours	6-20-72	3(b)
C. L. Vandeberg	8 hours	6-20-72	3(b)

(b) Because of said violations, the Carrier shall now be required to compensate the respective Claimants the difference between pro-rata and time and one-half rate of pay claimed for the length of time on the dates indicated in paragraph (a) immediately above.

OPINION OF BOARD: The Claims herein relate to payments for time spent in attendance at classes held by Carrier for its COMPASS program. COMPASS is the acronym for "Complete Operating Movement Processing and Service System". This new system was installed to bring together into one uniform system, tied to a central computer, the data on operations (car movements and locations) for the three major components of the 1970 merger. Carrier asserts that the classes herein involved were part of a two year training program covering some three to four thousand employees at about 175 locations. The training included new procedures and formats for operations.

Claimants herein were paid pro-rata payments for the time spent in attendance at the classes; they are claiming punitive compensation (time and one-half) for either attendance on their rest days or for attending classes either before or following their regular assignments (the latter category seeking overtime for the excess over eight hours). One Claim, that involving R. J. Hull was withdrawn.

Carrier takes the position that attending classes for training purposes such as that herein is not "work" or "service" within the language of Articles 2 and 3 of the Agreement; such activity is characterized as "other business on behalf of the Company" as specified in Article 20. Furthermore Carrier argues that there has been no indication by Petitioner of any Rules of the Agreement which have been violated, thus the Claim must fail. The Carrier cites a number of awards of the Board and Public Law Boards in support of its position, including Award No. 40 of Public Law Board 713, which will be discussed hereinafter.

Articles 2, 3 and 20 of the Agreement provide; in pertinent part:

"ARTICLE 2 * * *

(b) OVERTIME. Time worked in excess of eight (8) hours on any day, exclusive of the time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis."

"ARTICLE 3 * * *

(b) SERVICE ON REST DAYS. A regularly assigned train dispatcher required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days.

"Extra train dispatchers who are required to work as a train dispatcher in excess of five (5) consecutive days shall be paid one and one-half times the basic straight time rate for work on either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days."

"ARTICLE 20 COURT -- INQUEST. A train dispatcher held from service to attend court or inquest or other business on behalf of the Company, shall be paid, if an assigned train dispatcher -- the daily rate of his assignment for each day so held; and, if an extra train dispatcher -- at trick train dispatchers' rate for each day so held, except an extra train dispatcher shall be paid not less than he would have earned if he had continued in train dispatching service.

An assigned train dispatcher required by the Company to attend court or inquest, in addition to train dispatcher service on the same day, shall be paid eight (8) hours at the pro rata rate of his assignment. For like service an extra train dispatcher shall be paid on the same basis at the trick train dispatchers' pro rata rate, except if working a higher rated position at the time such service is performed, shall be compensated at the rate of the position worked. Payments under this section shall be in addition to any other compensation earned for other service.

Any fees accruing shall be assigned to the Company."

The Organization states that attendance at the classes was primarily for the Carrier's benefit. It is argued that such attendance was required, constituted "service", and hence was compensable under the penalty rules provisions cited above. The Organization also denies that Rule 20 has applicability to this situation. The Petitioner cites Award No. 7 of the Special Board of Adjustment Established Pursuant to Appendix K which dealt with a related dispute concerning COMPASS training on this property, but with a different Organization. In that Award the Board found that Carrier had utilized the services of the Claimant on an overtime basis and should have compensated him accordingly. Other Awards are cited which dealt with attendance at Carrier's behest and which considered such attendance "work" or "service". Petitioner also argues that Award No. 40 of Public Law Board No. 713 must be distinguished from the instant dispute in that there is no similar rule in this case comparable to that which was controlling in Award No. 40.

Award No. 31 of Public Law Board No. 1033 on this property (with a different Organization) quotes a series of Awards (including Awards 15630, 4250, and 14181) which hold that attending instruction classes is not "work" or "service". Referee Sickles in Award 20323 put the issue well:

> "The Board does not mean to suggest that the issue in dispute is so clear of resolution that reasonable minds might not differ in determining the appropriate application of the Agreement to the facts presented in this dispute. Nevertheless numerous Awards rendered by a number of Referees have consistently determined that mandatory attendance at classes such as those in issue in this dispute, do not constitute 'work, time or service' so as to require compensation under the various Agreements. Because of the consistent holdings of prior Referees, we are reluctant to overturn the multitude of Awards."

As indicated, Award No. 40 of Public Law Board No. 713 dealt with a virtually identical Claim on this property, also involving COMPASS training and an overtime claim. In that dispute, a special rule of the applicable agreement provided that:

> "Employees attending court, or detailed on any business for the Company other than relief work, shall receive compensation at the pro rata rate...."

The Board, in Award No. 40, distinguished its dispute from that in Award No. 7 of the Special Board of Adjustment referred to above, in that the special rule quoted above was not before the Board in the Award No. 7 dispute. The Board in Award No. 40 stated:

> "Rule 49 covers 'sound business ventures' of the Carrier. Claimant was 'detailed on business' for the Carrier when he was compelled to attend the then training sessions so that he would be better 'equipped to carry new, and presumably more efficient operations.' That being the case he is entitled to compensation only at the pro rata rate...."

In the instant case if the parties had intended that employees attending training classes or on other business for the Carrier be paid at the penalty rate, they would have so provided in the Agreement. Instead, Rule 20 supra seems applicable. Since there are no specific Rules in the Agreement relating to compulsory attendance at training classes, we must assume that prior Awards of the Board are controlling and that such activity is not "work" or "service". Such training is obviously of mutual benefit to the Carrier and the employees. We find that Rule 20 is comparable to the rule cited in Award No. 40 of Public Law Board No. 713: the reasoning in that Award was properly relied on by Carrier. This Board is not empowered to write new rules and we do not find any current rule support for the Claim herein.

Under all the circumstances and for the reasons indicated above we must conclude that the Carrier did not violate the Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1975.

Labor Member's Dissent to Award 20707, Docket TD-20629

Award 20707 is palpably erroneous as the decision rendered is not an adjudication based on interpretation and/or application of the applicable Agreement articles.

Award 20707 cites the pertinent parts of Articles 2, 3 and 20 of the Agreement but later states:

> "In the instant case if the parties had intended that employees attending training classes or on other business for the Carrier be paid at the penalty rate, they would have so provided in the Agreement. Instead, Rule 20 supra seems applicable. Since there are no specific Rules in the Agreement relating to compulsory attendance at training classes, we must assume that prior Awards of the Board are controlling and that such activity is not 'work' or 'service'. Such training is obviously of mutual benefit to the Carrier and the employees. We find that Rule 20 is comparable to the rule cited in Award No. 40 of Public Law Board No. 713: the reasoning in that Award was properly relied on by Carrier. This Board is not empowered to write new rules and we do not find any current rule support for the Claim herein."

The parties did place in the Agreement provisions for the payment of time and one-half for overtime (defined as time worked in excessive of eight (8) hours on any day) and for service on rest days. It is ludicrous to hold that each and every possible kind of or cause for time worked in excess of eight (8) hours (overtime) and each and every possible kind of or cause for rest day service must be specifically enumerated in the respective articles for several volumes could be filled if each and every detail of each task, duty, chore and/or responsibility falling on a train dispatcher were to be set forth in each article. A reasonable construction and/or application of these overtime and rest day articles would be to find that any time the Company requires the train dispatcher to spend time in excess of eight (8) hours on any work day or on rest days compensation at the time and one-half rate is payable unless there is a specific provision creating an exception to this time and one-half compensation. However, Article 20 does not constitute such a specific exception to the overtime or rest days time and one-half compensation in the claims involved in Docket TD-20629.

Award 20707 states "Instead, Rule 20 supra seems applicable" and "We find that Rule 20 is comparable to the rule cited in Award 40 of Public Law Board No. 713: ...". (The word "Rule" is used in Award 20707 but the Agreement uses the word "Article"). However, Rule 49 is not comparable to Article 20 and Article 20 is not applicable as even a casual reading of these provisions reveals.

Rule 49 involved in Award No. 40 of Public Law No. 713 is cited in part in Award 20707 but the complete sentence from this Award reads:

> "Employes attending court, or detailed on any business for the Company other than relief work, shall receive compensation at the pro-rata rate of the position on which service was last performed, with a maximum allowance of eight hours daily."

Article 20 from the instant Agreement is quoted in full in Award 20707. There are three paragraphs in this Article. Paragraph one applies to a train dispatcher, regular or extra, held from service to attend court or inquest or other business on behalf of the Company providing for payment at the daily rate of his assignment for an assigned train dispatcher and at trick dispatcher's daily rate for the extra dispatcher but not less than the extra dispatcher would have earned if he had continued in train dispatcher service. Paragraph two applies to a train dispatcher, regular or extra, required to attend court or inquest (other business on behalf of the Company is not included in this paragraph) in addition to train dispatcher service providing for payment of eight (8) hours at the pro-rata rate of his assignment for the assigned train dispatcher and eight (8) hours at trick train dispatchers' pro-rata rate for an extra train dispatcher unless working a higher rated position at the time such service is performed. And for either the regular or the extra dispatcher paragraph two establishing the minimum payment of eight (8) hours pro-rata for such additional service states "PAYMENTS UNDER THIS SECTION SHALL BE IN ADDITION TO ANY OTHER COMPENSATION EARNED FOR OTHER SERVICE." Paragraph three has no application in these claims.

Therefore, it is apparent that Article 20 is not applicable because the Claimants were not held from service to attend court or inquest or other business on behalf of the Company under paragraph one nor were the Claimants required by the Company to attend court or inquest in addition to train dispatcher service on the same day under paragraph two. The Carrier on the property made the argument that neither of the conditions in Article 20 had been satisfied and, therefore, no compensation whatsoever was payable but sought to extract the "other business in behalf of the Company" phrase in

paragraph one to defend its payment for COMPASS CLASS attendance at the pro-rata rate rather than the time and one-half rate. If the phrase "other business in behalf of the Company" were to now be inserted into paragraph two of Article 20 and Article 20 was found to be applicable as Award 20707 holds, then the minimum of eight (8) hours pro-rata additional compensation would be applicable to the overtime (i.e. service in excess of eight hours or in addition to train dispatcher service) claims. The Carrier contended on the property and the Employes agreed in the record that Article 20 is not applicable to the instant claims.

It is equally apparent from a reading of the Agreement provisions involved, i.e. Rule 49 in Award No. 40 of Public Law Board No. 713 and Article 20 in Award 20707, that they are not comparable. Rule 49 covers court attendance and/or any business for the Company other than relief work, establishes a maximum daily allowance of eight hours, and that the pro-rata compensation rate established will be based on the position on which service was last performed. Article 20 in paragraph one covers a train dispatcher held from service to attend court or inquest or other business in behalf of the Company establishing the minimum daily rate of pay, and in paragraph two provides for additional compensation for a train dispatcher who is required by the Carrier to attend court or inquest in addition to performing train dispatcher service on the same day establishing a minimum payment of eight (8) hours pro-rata for such additional court or inquest service. Rule 49 and Article 20 are not only not comparable but are dissimilar.

Award 20707 also states "Since there are no specific Rules in the Agreement relating to compulsory attendance at training classes, we must assume that prior Awards of the Board are controlling and that such activity is not 'work' or 'service'. Such training is obviously of mutual benefit to the Carrier and the employees".

The obvious fault with Award 20707 is holding that there are no specific Rules in the Agreement relating to compulsory attendance at training classes but also holding that Article 20, which is a specific rule in the Agreement (governing when a train dispatcher is withheld from service to attend court or inquest or other business in behalf of the Company in paragraph one and when required to attend court or inquest in addition to performing train dispatcher service on the same day in paragraph two) applies to compulsory attendance at these COMPASS CLASSES, which Award 20707 acknowledges to be training classes. Award 7 of Special Board of Adjustment established pursuant to Appendix "K" - Burlington Northern Inc.-BRAC Agreement - considers these same COMPASS training classes.

Award 7 also faced the same contention from this same Carrier and stated "The first facet that the Board addresses itself to is the Carrier's contention that the working agreement contains no provision for compensation of employees, on any basis, who take training outside their regularly assigned tours of duty". Award 7 further stated:

> "The Claimant, under the control and dominion of the Carrier, is rendering a service to it, albeit he is also deriving a benefit, in performing a prescribed duty or task for the Carrier. The fact that the Agreement Rules in question do not specifically list or mention training does not exclude them from being a service, a service which is performed consecutively with the assigned tour of duty as well as on assigned rest days. The several contract provisions do not purport to describe all the elements of service which constitute 'work.' Nor, however, do these contract provisions specifically exclude training sessions from the scope of 'work.'"

Award 7 sustained the claims involving these same COMPASS training classes ruling that the Carrier used the employe on an overtime and/or rest day basis and the overtime and/or rest day rules included in the working or schedule Agreement applied. The dispute in Award 7 was on all fours with the instant dispute and the claims in Docket TD-20629 should have been sustained on this very clear precedent on this property.

Award 20707 states "...we must assume that prior Awards of the Board are controlling and that such activity is not 'work' or 'service'." It should be evident that the National Railroad Adjustment Board does not or should not base its decisions on assumptions but on interpretation and/or application of the Agreements between the parties. Precedent in Awards is of value when the cases in the precedent Awards are directly similar to the dispute being adjudicated. Award 20707, as support for its erroneous finding that COMPASS Class attendance is not "work" or "service", mentions Award No. 31 of Public Law Board No. 1033 on this property which covers SPIN classes which are not the same as COMPASS classes. COMPASS classes were involved in Award No. 7 of Special Board of Adjustment established under Appendix "K" as hereinbefore mentioned and should have more precedential value than an Award considering other training classes. Award 20707 states that "Award 31 of Public Law Board No. 1033 on this property (with a different Organization) quotes a series of Awards (including Awards 15630, 4250 and 14181) which hold that attending instruction classes is not 'work' or 'service'." Awards 4250 and 14181 involved disputes wherein the claimant employes attended operating rules classes which are not

similar to COMPASS classes. Award 15630 did not involve operating rules classes but it was ruled there was a similar mutuality of interest and benefit. Award 15630 ruled that the class involved was the same as operating rules classes, stating "Attendance at classes, whether for examination of rules or MICS, involves the same issue". The Dissent to Award 15630 points out the error in Award 15630. The other Award cited in Award 20707 as support of the ruling that this was not work or service was Award 20323 (Sickles). Award 20323 also considers attendance at operating rules classes and very clearly limits the decision to such operating rule classes, stating "Nevertheless numerous Awards rendered by a number of Referees have consistently determined that mandatory attendance at classes such as those in issue in this dispute, do not constitute 'work' or 'service' so as to require compensation under the various Agreements." (Emphasis supplied) In Award 20323 the Carrier had allowed compensation at the pro-rata rate notwithstanding the various Awards mentioned in Award 20323 which found that no compensation whatsoever was payable as rules examination class attendance was not "work" or "service". Award 20323 ruled only that overtime compensation was not payable for attendance at operating rules classes.

The Referee in the instant case was also furnished a "series of Awards" by the Employes, i.e. 3462, 3966, 4790, 6846, 10062, 10808, 11048, 13724, 17316 of the Third Division and Award 7 of Special Board of Adjustment under Appendix "K" Burlington Northern-BRAC Agreement, wherein the dispute involved situations other than operating rules classes and the claims were sustained. Awards 4790, 10062, 10808, 11048 and 17316 involved conferences, meetings and/or training sessions similar to the COMPASS training classes involved in Docket TD-20629. Award 7 of Special Board of Adjustment established under Appendix "K" involved these same COMPASS class training sessions on this same property and the claims for overtime and/or rest day service at the overtime rate were sustained.

In support of its following of what is obviously not the best "series of Awards" Award 20707 states "Such training is obviously of mutual benefit to the Carrier and the employees". However, this same Referee in Award 20016 on this property identified the issue, stating "... the question is whether Dispatchers have the exclusive right to issue instructions concerning the picking up and setting out of cars ..." and then went on and denied the claim. Award 20707 recognizes what COMPASS means and what the training classes involved, stating:

> "COMPASS is the acronym for 'Complete Operating Movement Processing and Service System'. This new system was installed to bring together into one uniform system, tied to a central computer, the data on operations (car movements and locations) for the three major components of the 1970 merger. Carrier asserts that the classes herein involved were part of a two year

"training program covering some three to four thousand employees at about 175 locations. The training included new procedures and formats for operations."

The same Referee ruling in Award 20016 that instructions regarding car movements and locations is not work reserved to train dispatchers and in Award 20707 that COMPASS training classes (recognized in Award 20707 to be concerned with car movements and locations) were "obviously of mutual benefit to the Carrier and the employees", makes these two Awards incongrous at the very best.

Award 20707 is not an adjudication based on interpretation and/or application of the applicable Agreement articles. In addition, precedent Awards which clearly support these claims were discounted and/or ignored to permit denial of these claims based entirely on specious but erroneous reasoning. I must dissent.

J. P. Erickson
Labor Member