NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24050
Docket Number CL-23875

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Pittsburgh and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9383) that:

(a) Carrier violated the Telegrapher's Rules Agreement effective June 1, 1951, as amended, and also the Memorandum of Agreement effective February 18, 1977.

(b) Claimant Mr. T. F. Cicerchi had reported for Rules Class at Struthers, Ohio on his relief day as per General Notice 13-43 and was sent home by Mr. C. J. Lukenas, Supvr. Rules and Operating Procedures.

(c) Claimant is regularly assigned to a relief position at Struthers, Ohio and due to the Hours of Service Law he had reported to the March 24, 1979 class which was on a Saturday, his relief day. His regular relief days are Friday and Saturday.

(d) That Claimant Mr. T. F. Cicerchi be compensated for three (3) hours at the rate of $9.1359 per hour for March 24, 1979.

OPINION OF BOARD: Claimant, T. F. Cicerchi, was, at the time this claim arose, a Relief Operator at R. S. Tower, Struthers, Ohio. On March 1, 1979, Carrier published General Notices 13-42 and 13-43. These notices required Claimant to attend a 1979 Book of Rules Class and listed dates and places where the classes would be held.

Claimant reported to the P & L E Training Car on his rest day, March 24, 1979, but was denied admission to the class because the Car was full. Claimant subsequently attended a class on July 7, 1979 and was properly compensated for that attendance.

The Organization contends that Carrier violated the Agreement by failing to pay Claimant three hours' wages for March 24, 1979, the day he appeared for the Rule Book Class, but was sent home because all the spaces were taken.

The Organization argues that Claimant did all he could to attend the class. According to the Employes, Claimant went to the first class scheduled on his rest day so as not to conflict with the "Hours of Service Law". Through no fault of his own, he was denied admission by the Carrier.

In addition, the Organization refers to a number of Awards which, it claims, supports its position. It notes that in Award 19474, for example, Claimant J. G. Morin was awarded eight hours' pay for being called for work on May 20, 1970 even though he was not actually permitted to protect the assignment.

Accordingly, the Organization seeks three (3) hours' pay (the length of class claimant should have been allowed to attend) at the rate of $9.1359 per hour for March 24, 1979.

Carrier, on the other hand, insists that no violation of the Agreement exists. It points out that the Memorandum of Agreement dated February 18, 1977 requires payment for Rule Book Class only when the class was actually attended. Since Claimant did not attend the March 24, 1979 class, he should not be compensated therefore. Furthermore, according to the Carrier, Claimant had ample opportunity to reschedule his attendance at a time which would not be in conflict with the Hours of Service Law. In short, Carrier asks that the claim be denied.

The language of the Memorandum of Agreement dated February 18, 1977 is controlling here. In relevant part it states:

> "When an employee is required by the Carrier to attend.... briefing classes on the Operating, Airbrake and Safety rules, such employee will....be compensated at the straight time basic hourly rate of the last service performed for the actual time consumed in attending the class until released with a minimum of three (3) hours." (Emphasis supplied)

It is undisputed that Claimant did not actually attend the three hour class held on March 24, 1979. Accordingly, under the plain meaning of the Memorandum, he is not entitled to pay. The parties did not contemplate payment for "arriving" at a class.

This result might appear harsh since Claimant did, in good faith, seek to attend the class held by Carrier at a time which would not put him in conflict with the Hours of Service Law. However, Claimant was not required to attend this particular class. Rather, he was merely required to attend one of the number of classes scheduled on one of his rest days. In fact, Claimant did attend such a class on July 7, 1979 and was paid accordingly.

The cases cited by the Organization differ from facts presented here. In those cases, the Claimants were required to report to work at specified times, even if no work was actually performed. Here, Claimant was merely given a schedule of classes. He was required only to attend any one class provided that his attendance did not conflict with the Hours of Service Law.

Accordingly, we must deny the claim in its entirety.

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 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of November 1982.

LABOR MEMBER'S DISSENT TO
AWARD 24050, DOCKET CL-23875
(Referee Scheinman)

In this case the Referee predicates his denial Award upon the thought that:

> "The parties did not contemplate payment for 'arriving' at a class."

Contemplating payment for arriving at class is arguable but there is no argument that the parties did not contemplate Carrier turning an employe away from a class after notice thereof was duly posted and no method of registration or control of class size was instituted by Carrier. Carrier is responsible for payment to all that elected to attend when they attempted to attend. Claimant acted on Carrier's General Notice and reported at the scheduled time and place. He surely was due the minimum contractual amount payable for such service.

General Notice No. 13-42 provided one, and only one, exception wherein an employe would not be admitted to class, i.e., "Employes without these books will not be admitted to class."

To leave Carrier in a position to order an employe to attend class, without accommodating him when he makes that attempt, not only appears harsh but is, in fact, harsh.

Here was a case where the Referee should have brought his informed judgement to bear and fashioned a remedy which drew its essence from the agreement. For example, if the memo agreement did not provide the minimum payment requested, i.e., a minimum of three (3) hours' pay, then Article 20 II B (2) would require the same payment. It reads in part:

"(2) At the rate of time and one-half with a minimum of two (2) hours for each tour of duty on the rest day other than Sunday."

and should have been followed rather than to allow Carrier to usurp Claimant's time without payment.

The Award is a mistake and I dissent to its palpable error.

Labor Member

Date 12-7-82