

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31949
Docket No. CL-32318
97-3-95-3-115**

The Third Division consisted of the regular members and in addition Referee Fred Blackwell when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11125) that:

The following claim is hereby presented to the Company in behalf of Claimant(s) listed on Attachments A and B.

(a) The Carrier violated the Clerks' Rules Agreement effective July 21, 1972, as revised, particularly Rules 7, 14, 16, 17 and other rules, as well as Memorandum of Agreement No. 9, when following the Claimants' attendance at company sponsored meetings held in January at Syracuse, NY, and in February at Albany, NY, as directed in letters dated January 19 and 27, 1993, or verbally on subsequent dates, and it failed to fully compensate Claimants' at the overtime rate, based on the appropriate pro rata rate of pay for each of their regular positions, for all hours they worked outside their regular assigned tours of duty.

(b) Any Claimant who attended said meeting(s) continuous with their regular work period, or were required to return for further service following their regular work period should each now be allowed a minimum of three (3) hours time and one-half pay, or on the minute basis, if they were held longer than two (2) hours, based on the appropriate hourly rate for each hour that they attended said meetings.

(c) In any case where a Claimant was required to return for further service following their regular work period, they are to be considered as if on continuous duty, and paid accordingly.

(d) Any Claimant who attended said meeting(s) on their assigned rest day should be allowed a minimum of six (6) hours punitive pay, based on the pro rata hourly rate of their regular assigned position.

(e) In all other cases, Claimants' should each be allowed a minimum of three (3) hours time and one-half pay, or on the minute basis if they were held longer than two (2) hours, based on the appropriate hourly rate for each hour that they attended said meetings.

(f) Claimants' should be allowed the appropriate travel time and expenses incurred for their attendance.

(g) This claim has been presented in accordance with Rule 25 and should be allowed.

ATTACHMENT 'A' Tuesday, February 16, 1993

Irenio Dulay
Jane Palmer
Katherine Abaire
Mike Brown
Jeff Brown
Janis Gaunay
Steve Leonardo
Juanita Palmer
Deb Sanderson
Rich Kweller
Fred Hiller
Jim Blase
Ken Jensen

Gary Villeneuve
Dave Schechter
Bob Leavitt
Gene Jakubowski
Martin Robinson
Kathy Fay
Michelle Kepner
Stan Zeh
Silas Blackmon
Dennis Baumgardner
Ron Wood
Patti Anderson

ATTACHMENT 'A' Wednesday, February 17, 1993

Diana Wilsey
Tom Austin
Jim Lagios
Bill Jennings

John Kircher
Joe McCallion
Andy Pelletieri
Helen Ross

Joe Wolodkevich
Brian Howard
Marc Morris
Kevin Wilbur
Sue Doyle

Bob Hall
Kathi Brennan
Gerry Paulsen
Brian Jeffers
Tom Berg
Bob Murphy
Toni Dively

ATTACHMENT 'B' Wednesday, January 27, 1993

Francis LaColla
Terry Fuller
Terry Gilbride
Eileen Rush
Frank Zalocha
Mark Kavouksorian

Frank Conte
Jim Gallagher
Jim Jones
Walt Seim
Tony Zizzi
John Schlemmer"

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This issue in this dispute is whether the proper rate applicable to payment to the herein Claimants for attending meetings on their rest hours and rest days, is the overtime rate in respect to some Claimants, as contended by the Organization, or whether the straight rate, which has been paid by the Carrier, is correct.

The record shows that approximately 45 Claimants attended Carrier sponsored meetings held in Syracuse, New York, in January 1993, and in Albany, New York, on February 16 and 17, 1993.

The Carrier asserts that the Claimants' attendance at the meetings in question is not covered by any contract rule and that although payment of the Claimants was not required under the contract, the Management has remunerated the Claimants fairly, in the spirit of good will which was the main purpose of the meetings, and in the same manner that the Carrier paid employees for attending earlier meetings in Buffalo, New York and New York Penn Station, from which no similar claims have resulted. The Carrier submits further that the local Management and the Local Chairman discussed the meetings before scheduling the Albany meetings; that many of the Claimants attended the meetings during their regular assigned tours of duty and were paid a regular day's pay; that those employees who attended outside their tours received four hours compensation for attending the two hour meeting; and that employees who traveled from outlying points were paid mileage and travel time, in addition to the four hours for attending.

The Organization submits that the claim is supported by Rules 7, 14, 16, 17 of the Agreement and Memorandum of Agreement No. 9.

In assessing the foregoing, and the entire record, including the parties' Submissions in support of their positions in the case, the Board finds that the record shows affirmatively that the employees were required to attend the meetings and, further, that the payment by the Carrier of straight rate gives the employees time in attending the meetings the status of "work" or "service" under the applicable Rules. Accordingly, the Board finds and awards that the Claimants are entitled to be paid in accord with Rule 14 of the Agreement, except that any employee who did not attend any meeting is not eligible for pay under said Award.

In view of the foregoing and based on the record as a whole, the Board finds that the record shows the claims to be meritorious and that, accordingly, a sustaining Award is in order. The record supports the claims and the claims are sustained in accordance with and shall be paid under the provisions of Rule 14 except that any employee who did not attend the meetings is not eligible for compensation under this Award.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of March 1997.

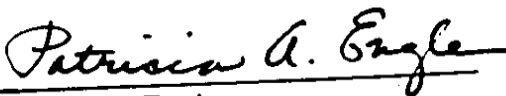
**CARRIER MEMBERS' DISSENT
TO
THIRD DIVISION AWARD 31949, DOCKET CL-32318
(Referee Blackwell)**

The Majority's finding that Claimants' attendance at the "face-to-face" meetings with management was "required," and that Carrier's payment of straight-time pay rates gave attendance at the meetings "the status of 'work' or 'service'" under the Overtime rule defies evidence of record concerning the circumstances of the meetings and long-standing industry precedent as to what constitutes "work" or "service."

The plainly voluntary nature of the meetings is evidenced by the acknowledged fact that some of the very Claimants cited opted not to attend, without incurring any such disciplinary consequences as typically result from unexcused absence or failure to comply with instructions. It is also an acknowledged fact that attendees were paid consistent with past practice attached to such gatherings. Given the Organization's knowledge of and previous acquiescence to that practice, the Majority's honoring this claim denigrates fundamental work-relationship principles so critical to labor-management harmony and stability in today's workplace.

The Claimants who chose to attend the cited "face-to-face" meetings listened to top managers' views on the direction of the Carrier's business, and were invited to ask questions and make suggestions. While this is not "work" or "service" as defined by the parties' Agreement or the preponderant weight of precedent promulgated by this Board, the Carrier paid straight time as it had in the past, in a good faith validation of its commitment to employee involvement. The Majority's seizure of that gesture to invoke overtime pay chills efforts toward labor-management cooperation vital to this Carrier's continued operations, while entertaining an irredeemably nostalgic return to days of unjust enrichment in the industry.

For these reasons, we do dissent and hold this Award to be without precedent.


Patricia A. Engle


Martin W. Fingerhut


Michael C. Lesnik


Paul V. Varga

4/25/97