

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32204
Docket No. TD-32714
97-3-96-3-14

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Burlington Northern

STATEMENT OF CLAIM:

"This claim is for payment of the difference between straight time and time and one-half for one hour for required attendance of CTWC training classes in May 1994. Dispatchers were required to attend these training sessions after already performing eight hours of train dispatching service on the days involved. The dispatchers involved were paid the straight time rate of pay instead of the overtime rate of pay as required by Article 2 (b) of the agreement between the Organization and the Carrier. Article 2 (b) states '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.' Therefore the Carrier will now compensate the dispatchers involved by providing one-half hour additional pay for attending the required CTWC training classes."

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.

During May 1994, the Carrier began holding one hour training classes for all Agreement covered employees on a computer system called CTWC, an acronym for "Computer Track Warrant Control." Ninety-two Dispatchers, Claimants in this matter, attended these training sessions, on various dates, after the completion of their regular assignments. Carrier paid each attendee an additional one hour's pay at straight time rates. The Organization maintains that under the application of Article 2(b) Dispatchers participating in these sessions should have been paid at time and one-half rates, contending that they had been required to perform service in excess of eight hours on the days involved.

This basic issue involved in the Organization's claim is not new to this Board. Twice before the Organization has brought claims to this Division contending that its Agreement was violated when Carrier paid Dispatchers at the pro-rata rate instead of at the overtime rate, for attending training classes on their rest days or after working their regular assignments. In both cases, Third Division Awards 20707 and 30047, the claims were denied. The Board has reviewed Awards 20707 and 30047 and do not find them to be in palpable error. They will be followed here and the claim now before this Board will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 17th day of September 1997.

Labor Member's Dissent
Third Division Award No. 32204
Referee Fletcher

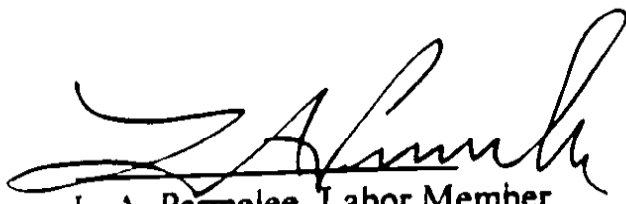
The decision of the majority in this case is wrong. Not so much because they did not find Award Nos. 20707 and 30047 to be in error, but because the award uses Awards 20707 and 30047 as the basis for denial when the matter in Award 32204 is different.

The question in this case was, what is the appropriate compensation for train dispatchers when they are required to remain on duty after the expiration of their regularly assigned hours? If they are required to remain on duty (i.e., remain in the service of the Carrier continuous with their regular hours), in excess of eight hours, they must be paid for that extra on-duty time at the overtime rate. The only exception to the requirement that time worked in excess of eight hours must be paid at the overtime rate, is that found in Article 2(c) which refers to "transfer time".

Article 2(c) makes it clear that if a train dispatcher is required to remain in charge during the period of time it takes to transfer all information to his relief, he is not paid for that time. However, this Article also makes it clear that "transfer time" is the only exception to the accumulation of overtime pay when a train dispatcher remains on duty. It is a well accepted principle of contract construction that where one exception is expressed within a contract, no other exception can be implied.

Each claimant in this case was required to remain on duty and attend a CTWC class after the expiration of their tour of duty. Under the circumstances of this case, it does not matter why the Carrier required this additional hour of duty. Accordingly, the question of whether the on-duty time was work or service, and the question of whether there was a mutuality of interest in the claimant's attendance at these classes (as was the case in 20707 and 30047) is immaterial. What does matter is the clear and precise agreement language that the parties crafted and how it applies to the Carrier's requirement that these claimants remain on duty after their regular hours. That language was ignored by the majority in this case.

I dissent.



L. A. Parmelee, Labor Member