Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 33146
Docket No. TD-32903
99-3-96-3-248

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

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

STATEMENT OF CLAIM:

"CLAIM NUMBER 1, Carrier File DIA-941202AA

"(a) The Burlington Northern Railroad Company (hereinafter referred to as the Carrier) violated the current effective agreement between the Carrier and the American Train Dispatchers Department (hereinafter referred to as the Organization), Article 3 (b) in particular when on September 17 and 18, 1994 it required R. A. Schelbitzki to work both assigned rest days of his work week."

CLAIM NUMBER 2, Carrier file DIA-941228AB

"(a) The Burlington Northern Railroad Company (hereinafter referred to as the Carrier) violated the current effective agreement between the Carrier and the American Train Dispatchers Department (hereinafter referred to as the Organization), Article 3 (b) in particular when on October 9, 1994 it required R. A. Schelbitzki to work an assigned rest days of his work week."

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.

Claimant at the time this dispute arose held a position on Carrier's Guaranteed Assigned Train Dispatcher Board (GATDB) at Fort Worth, Texas. As such, his pay for service terms were governed in part by Article V, Section 2 A of the parties' Memorandum of Agreement dated May 3, 1993, which provides as follows:

> "Each train dispatcher in active service, including those in training and on extra lists as of June 1, 1993, will be afforded a protective rate of $152.84/day effective with this Agreement, which will be adjusted to reflect subsequent general wage increases. This protective rate will be paid for those days in any work week that a dispatcher covered by this Section does not receive a minimum of five (5) days' compensation for each Monday through Sunday work week, in which fully available, and rest days need not be consecutive. Any calendar day, or portion thereof , a train dispatcher is unavailable for service, will be deducted from his five days per week protection."

In Claim Number 1, Mr. Schelbitzki, after having attended "teambuilding" training classes on Monday, September 12 through Friday, September 16, worked as a Train Dispatcher on Saturday and Sunday, September 17 and 18, and seeks time and one-half for those days. Claim Number 2 presents substantially the same issues with reference to his schedule the following month. Claimant attended Journeyman training classes for five days October 3 through October 7, and worked an eight hour shift as a Dispatcher on October 9, for which he claims time and one-half.

In support of its claim, the Organization cites Article 3, Paragraphs (a) and (b), which provide as follows:

"(a) Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest extent possible. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five (5) days per week.

(b) A regularly assigned train dispatcher required to perform service on the rest day 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 on a 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 and seventh days."

The question of whether time spent in attendance at training classes is commensurate with time worked for purposes of qualifying for overtime rates under the above Rules has stimulated longstanding debate between the parties and been the subject of a plethora of prior Awards. Based upon a careful review of this record and numerous such past decisions, this Board concludes that the Organization's position that attendance at training classes constitutes work or service within the meaning of these Rules cannot be sustained.

In Third Division Award 20707 involving the same parties, the Board, after reviewing numerous earlier Awards on point and concluding that they were controlling, rejected the Organization's argument that attendance at training classes is the equivalent of "work" or "service" so as to require pay at penalty rates. It quotes from Third Division Award 20323, which held:

"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."

See, also more recent Third Division Awards 30047, 31765, 32204 and Second Division Award 12367.

The Organization suggests that these claims represent a variant on the issue decided adversely to it by the Awards of this and other Divisions, and require a different analysis and outcome. The circumstances of these claims, it argues, are distinguishable - as an extra board employee, unlike the petitioners in the Awards upon which Carrier relies, Claimant was guaranteed a minimum of five days' compensation each week, but did not have regularly assigned work or rest days. Thus, he is not in this instance claiming overtime compensation for attendance at training classes on a rest day as, for example, was the claimant in Third Division Award 30047. Rather, in addition to invoking the terms of Article 3 (b) above, it maintains that the terms of Section II (A) (3) of the December 21, 1984 Agreement mandate overtime under these circumstances. Those provisions read:

> "Guarantee time . . . may be used for training or other service, in which event a day on which training or service is required shall be considered the same as a day on which train dispatching service is performed. . . ."

While the Board credits the inventiveness of the pleadings, we believe the claim essentially puts a new spin on arguments previously spurned by the Board on a great many prior occasions. First, because he was assigned to the Guaranteed Extra Board, Claimant did not have regularly scheduled rest days. The Organization's contention with respect to Article 3 (a) and (b) requiring overtime rates (assuming it could somehow overcome the significant weight of authority finding training classes not to be "work" or "service") is thus unavailing since Article 3 has no application to him. Second, with regard to the Section II (A) (3) argument, in lifting that provision from context and reading it outside of its relation to other terms, the Organization misconstrues it. Section II (A) (3) simply states that for purposes of determining guarantee time, attendance at training classes will be considered as akin to service dispatching trains. It would torture that provision into unrecognizable form to read it as having broader application to overtime issues. That interpretation, unlike the

expansive construction urged by the Claimant, is absolutely faithful to and reconcilable with the other terms at issue, and with the uniform and consistent past Awards in this area.

As held in Second Division Award 12367, "[t]he same issue has been addressed numerous times on this property and throughout the industry. Specifically, past Awards have held that attendance at training classes are not 'work' or 'service.'[citations omitted.] Therefore, we again adhere to the wisdom of applying the findings made in previous Awards to identical situations. Accordingly, the Carrier's decision to pay for attendance at the training sessions at the straight-time rate was proper." The Board concludes that the issues involved in these claims are the same as have been adjudicated by several prior decisions of the Board, and that the principles they announce are again applicable in this instance.

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 25th day of March 1999.