

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33832
Docket No. CL-33183
99-3-96-3-628**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc. (former Chesapeake and Ohio
(Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11376) that:

Claim No. 1

(TCU file: HV-1445, Carrier’s file: 95 0186)

- (A) The Carrier violated the terms of the General Agreement and Memorandum thereto when, on January 2, 3, 4, 8, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, and 31, 1994, and February 1 and 2, 1994, they failed and/or refused to compensate Clerk W. King the instructor’s rate of \$11.03, in accordance with Rule No. 10; and,
- (B) The Carrier shall now be required to repay Clerk W. King instructor’s pay on the aforementioned dates, total payment \$242.66 the amount reclaimed by the Carrier, with interest. These monies shall be on a separate check, and exempt from all deductions, because taxes and railroad retirement have been paid twice on this money.

Claim No. 2

(TCU file: CAN-196, Carrier's file: 95 0157)

- (A) The Carrier violated the terms of the General Agreement and Memorandum thereto, when on the following date: November 2, 1994, Mr. P. J. Henderson, ID #607493 was allowed instructor's rate of \$11.47 on the above date (plus other monies entitled to) and then on or about December 15, 1994, the instructor's rate was arbitrarily taken back; and,
- (B) The Carrier shall now arrange to allow Clerk P. J. Henderson, ID #607493, instructor's rate on the aforementioned date.

Claim No. 3

(TCU file: 85-1246, Carrier's file: 95 0323)

- (A) The Carrier violated the terms of the Clerks' General Agreement, particularly Rule 10, when on February 24, 1995, the Carrier arbitrarily and unilaterally deducted \$11.03, designated as "qualify", from Claimant Lou C. Vaughan's pay check covering pay period ending February 10, 1995, for trainer service rendered (over a year ago) on Friday, February 4, 1994; and,
- (B) The Carrier shall promptly restore the \$11.03 improperly, arbitrarily and unilaterally deducted on February 24, 1995.

Claim No. 4

(TCU file: 666-2439, Carrier's file: 94 0502)

- (A) The Carrier violated Rule 10, Paragraph 4 of the General Agreement when it failed and refused to allow Claimant O. A. Karnes the special training allowance on July 3, 5, 6 and 7, 1994; and,

- (B) The Carrier shall now arrange to pay O. A. Karnes, ID 628059, the amount of \$44.12 the amount of training pay that was deducted from his check.”

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.

The claims contain the common dispute that the Carrier denied training allowances because each Claimant was being compensated at the overtime rate. The claims will be sustained.

First, Paragraph 13(a) of the Agreement effective August 10, 1981 provides:

“Employees selected by the Carrier to train or teach other employees shall be given a training allowance computed in accordance with the provisions of Rule 10(b)4 of this Clerks’ General Agreement, for each day so assigned which shall be in addition to other compensation due for that tour of duty.”

The key language in that provision is that the training compensation is to be paid “in addition to other compensation due for that tour of duty.” Therefore, it is irrelevant that the employee is paid overtime. Training pay is additional.

Second, the record contains a number of instances where, under the same circumstances, the claimed type of compensation was paid. The Carrier did not refute the existence of those payments.

Third, Public Law Board No. 3540, Award 67 does not change the result. There, the employee was called for overtime and was denied a training allowance. In denying the claim, the Public Law Board found that the record did not show that the employee was called on overtime to train an unqualified employee thus entitling the Claimant therein to the training allowance. Rather, the Public Law Board found that the employee was assigned to assist an employee on a regular position. That is not the fact situation in these claims. Here, Claimants were instructing other employees during the overtime calls. The interest requested in Claim No. 1 is denied.

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 21st day of December 1999.