

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36859
Docket No. SG-36333
04-3-00-3-530**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago &
(Northwestern Transportation Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (C&NW):

Claim on behalf of C. W. Kocian, for payment of four hours at the one-half time rate, plus skill differential, account Carrier violated the current Signalmen’s Agreement, particularly Rule 5(j) when it failed to compensate the Claimant at the time and one-half rate for service performed in excess of forty hours per week during the week of April 27, 1999 through May 1, 1999 inclusive. Carrier File No. 1198743. General Chairman’s File No. 9c055172. BRS File Case No. 11304-C&NW.”

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 Claimant is seeking payment at the overtime rate due to the alleged failure of the Carrier to appropriately pay him for service beyond 40 hours during the week of April 27, 1999. There is no dispute in this record on the facts as they pertain to the disputed rate. On April 27 and 28, 1999 the Claimant attended Crane Safety Class beginning at 6:30 A.M, ending at 4:00 P.M. with an additional half hour of travel, or ten hours per day. The Claimant also attended Crane Safety Class on April 29, 1999 going on duty at 6:30 A.M. and ending at 2:00 P.M. with an additional half hour of travel time. As per Rule 11, he was paid at the straight time rate for the 28 hours of attendance at the safety class. The Claimant worked his normal shift of eight hours on April 30 (with one hour paid at the overtime rate) and eight hours on May 1, 1999. In all, it is not disputed that he ended the week with 44 hours paid at the straight time rate. However, the claim at bar is that because the Claimant exceeded his eight hours in any day on both April 27 and 28, the straight time rate was improper as per Rule 5(j) as he was due 2 hours of overtime on both days, but was inappropriately paid.

The Carrier denied the claim maintaining that travel was not to be computed in paying overtime, as per Rule 11. It further argued that because the time disputed not only included travel time, but also was for the purpose of training, it was not covered by Rule 5(j). It was the Carrier's position throughout this claim that the Claimant had been appropriately compensated.

The Board paid close attention to the Organization's arguments with regard to the language of the Rules at issue. We note that the Organization maintains that the Carrier did not schedule the Crane Safety Classes during the Claimant's regular hours and is therefore responsible for the overtime payment. The Organization focuses upon the language of Rule 11 holding that training "will if possible" be during regular working hours and the Carrier exceeded those hours.

The cited Rules do not support the Organization's position. Rule 5(j) – Weekly Overtime states, in pertinent part:

“Work in excess of 40 straight time hours in any week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from a furloughed list, or where days off are being accumulated under section (g) of this rule.”

Rule 11 – EXAMINATIONS OR RE-EXAMINATIONS states, in pertinent part, that:

“. . . employees required to take Book of Rules or similar examinations or re-examinations, or instructions, or physical examinations, will if possible, take same during regular working hours, without deduction in time therefor. Where conditions do not permit such examinations being taken during regular working hours, or where the employee is required to travel outside of working hours, such time, including time traveling and waiting will be paid for at straight time.”

Rule 19 – TIME AND EXPENCES (OTHER THAN TRAVELING CREWS OR INSPECTORS) states, in pertinent part, that:

“. . . Straight time rate for regularly assigned hours, rate and one-half for time worked outside of regularly assigned hours and straight time rate for all time waiting or traveling.”

The Carrier pointed out on the property that Rule 5(j) specifically relates to “Work in excess of forty hours. . .” and that training is not “work.” It further pointed out that the Claimant had included travel time in calculating the four hours beyond the eight hours on the two days of Crane Safety Class and the hours of travel were clearly to be paid at the straight time rate under Rule 19 and Rule 11. The Board finds that attendance at Crane Safety Class is covered by Rule 11. The Board also finds that the Carrier’s position that “it was necessary for a small portion of the school to be held outside of normal hours. . .” and that such was “not excessive” is not shown to be improper.

The Board concludes that the Rules support the Carrier in all respects. The operative Rules and language do not require overtime payments as sought by the Organization. The Claimant was not working or considered to be working while he was attending Crane Safety Classes under the language of the Rules, supra. Therefore, the claim must 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 28th day of January 2004.