

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37004  
Docket No. MW-36715  
04-3-01-3-272**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**PARTIES TO DISPUTE:** ( (Brotherhood of Maintenance of Way Employees  
(National Railroad Passenger Corporation  
( (Amtrak) – Northeast Corridor

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to properly compensate Third Rail Electrician K. A. McBean at his overtime rate of pay when he was directed and required to attend training camp that ran through his assigned rest days of February 2 and 3, 2000 (System File NEC-BMWE-SD-4017 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. A. McBean shall now be compensated for eight (8) hours at his straight time rate of pay so as to equal the amount of pay the Claimant should have received at his time and one-half rate of pay for sixteen (16) hours' pay for February 2 and 3, 2000.”

**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 claim raises the issue of whether the Claimant is entitled to the overtime rate under Rules 45 and 46 in connection with his required attendance at training on his rest days. These provisions provide for payment at the overtime rate for "time worked" in excess of 40 hours or five days in any workweek. The Claimant's normal workweek was Friday through Tuesday, with Wednesday and Thursday as rest days. He worked Friday, January 28 through Sunday, January 30, 2000 on his regular assignment and was instructed to attend Engineering Department Training Camp from Monday, January 31 through Thursday, February 3, 2000. The Claimant was paid eight hours plus two hours of travel time at the straight time rate for each day of training. He commenced his regular assignment again on Friday, February 4, 2000.

The Organization argues that because the Claimant was required by the Carrier to perform service on his two rest days, he is entitled to the overtime rate of pay on those days under both Rules 45 and 46 because he worked both more than 40 hours and more than five days that week. It relies upon Third Division Award 31950 on this issue, and Third Division Awards 26522, 26523, 26528, 27751, 27848, 28151, 28153, 28154, and 34181 for the proposition that the overtime rate is appropriate to remedy the Carrier's improper change of workweeks.

The Carrier contends that there is a significant body of arbitral authority establishing the principle that training, where there is mutuality of interest or benefit, is not "work" or "service" covered by the Agreement. See, Second Division Awards 10241, 12234, 12235, 12359, 12367, 12631, 12637, 12639; Third Division Awards 20323, 20707, 22704, 27021, 30047; Public Law Board No. 6312, Award 24. The Carrier asserts that because the Organization has neither asserted nor proven that the training involved herein was exclusively for the Carrier's benefit as it

related to issues of safety, Rules 45 and 46 do not apply and the straight time rate of pay was appropriate compensation for the Claimant's attendance at training on his rest days, citing Public Law Board No. 6369, Award 2.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving that the Carrier violated Rules 45 and 46 as alleged in this case by paying the Claimant the straight time rate for his attendance at training on his rest days. The parties agree that different crafts should not be treated differently on this property, each relying upon an Award emanating from another craft dealing with this issue. The Organization relies upon Third Division Award 31950 resulting from the provisions of the Transportation Communications International Union Agreement, and finding the Organization's authorities on this issue "more persuasive and applicable to the herein facts" without further explanation. Four years later the Carrier and the Brotherhood of Railroad Signalmen presented the general issue of whether attendance at training camps during other than regularly assigned hours requires compensation at the straight time or overtime rate to Public Law Board No. 6329. In Award 2, the pertinent Rule language was set forth, which provides for overtime after 40 hours a week or eight hours a day of "time worked," similar to Rules 45 and 46 herein. The Board discussed the rationale that training was of mutual benefit and interest to both the Carrier and the employee, and reviewed the precedent supporting the finding that mandatory attendance at training classes does not constitute "work, time or service" so as to require overtime payment under the applicable Agreement provisions. After considering the competing precedent and arguments, the Board found that, where training is consistent with the "mutuality of interest" principle, employees who attend such classes should be compensated at the straight time rate of pay.

Because we are unable to determine whether the basis for the Board's conclusion in Third Division Award 31950 was the lack of mutuality of interest or reliance on other factors as there is no explanation for the rationale used to support the finding, we do not necessarily overrule it. However, the Board is convinced that the well-reasoned conclusion in Public Law Board No. 6329, Award 2 is applicable in this case, because there is no assertion that the training herein does not meet the mutuality of interest criteria. Accordingly, the claim for overtime compensation is denied.

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**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 18th day of May 2004.**