

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38242
Docket No. MW-37302
07-3-02-3-312

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to compensate Mr. C. A. Broadwell for November 1, 2000 when he attended a required On Track Safety (OTS) class as directed at Valley City, North Dakota (System File R1.644/8-00127-040).
- (2) The Carrier violated the Agreement when it failed and refused to compensate Mr. M. R. Wentz for November 1, 2000 when he attended a required On Track Safety (OTS) class as directed at Valley City, North Dakota (System File R1.643/8-00127-041).
- (3) As a consequence of the violated referred to in Part (1) above, Claimant C. A. Broadwell ‘. . . shall now be reimbursed for the equivalent of eight (8) hours at the Section Laborer rate of pay and have all overtime, vacation, fringe benefits and other rights restored which were lost to him as a result of the above violation.’
- (4) As a consequence of the violation referred to in Part (2) above, Claimant M. R. Wentz ‘. . . shall now be reimbursed for the equivalent of eight (8) hours at the laborer rate of pay and have all overtime, vacation, fringe benefits, and other rights restored which were lost to him as a result of the above violation.’”

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 are those of two employees who, while on furlough, attended a one-day On Track Safety (OTS) class in Valley City, North Dakota, on November 1, 2000.

It is the position of the Organization that attendance at an OTS class is a condition of employment and that, as such, the Carrier is obligated to not only provide the training class, but to also compensate employees for their attendance at such class. In this respect, the Organization contends that employees had been told that nobody would be allowed to work after the end of calendar year 2000 without having first attended an OTS class before the end of the year.

The Organization further asserts that the Carrier did not present OTS classes until October and November 2000, after a number of employees, including the Claimants, had been furloughed at the end of the production season, which runs from May through September. It maintains that although the Claimants were furloughed, they had reason to anticipate being recalled from furlough during the off season for work. It was for this reason, the Organization asserts, the Claimants determined it was necessary for them to attend the OTS class so as to satisfy the imposed class attendance requirement. Moreover, the Organization submits that Claimant Broadwell was recalled from furlough for short term work at a derailment site during the first full week of January 2001. It thus argues that had Claimant Broadwell not attended the OTS class he would have been denied that work opportunity.

Contrary to the Organization's contentions that the Claimants had a need at the time to attend an OTS class, or had been directed to do so while on furlough, the Carrier contends that its instructions regarding attending an OTS class dictated that everyone who was working at the time of the training classes (October and November) be required or directed to do so, and because the work season was almost over at that time, a decision was made to only train those employees who would be required to continue working during the winter months and not provide further OTS classes until the startup of the 2001 work season. Thus, the Carrier asserts, because the Claimants had been furloughed in September 2000, there was no need for them to attend an OTS class until they returned for full-time work in the Spring of 2001.

The Board concludes that the Claimants attended the OTS class of their own volition while on furlough. We concur with the Carrier that they are not entitled to compensation for time expended in doing so. Certainly, if we had before us a claim involving an employee who had not been provided opportunity of attendance at an OTS class and was thereafter denied a work opportunity when subject to recall from furlough for short term work, the decision of the Board might well differ. However, since we do find that circumstance here before us, the instant claim(s) will be denied for lack of merit or Agreement support.

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 July 2007.