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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40599
Docket No. SG-40604
10-3-NRAB-00003-080452**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of A. N. Davis, for 15 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 7, 8, 13 and 15, when it required the Claimant to perform service outside his regular assigned hours on February 20 and 21, 2007 then failed to compensate him as required by the Agreement. Carrier’s File No. 1472769. General Chairman’s File No. N 15 674. BRS File Case No. 13976-UP.”

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 a Signal Maintainer assigned to the 2:30 P.M. to 10:30 P.M. shift. This claim protests the failure of the Carrier to compensate the Claimant at his time and one-half rate of pay for his attendance at a required Rules training class outside of his assigned work hours on February 20 and 21, 2007. The Organization relies on Rules 5, 13 and 15, as well as the following provisions of Rules 7 and 8 of the Agreement, in support of the Claimant's entitlement to the overtime pay rate.

"RULE 7 - SHIFTS

The starting time of employees will not be changed without first giving the employees affected seventy-two (72) hours notice. Starting times will not be temporarily changed for the purpose of avoiding overtime.

RULE 8 - CHANGE OF SHIFT

- A. Employees changed from one shift to another will be paid for the first shift of each change at time and one-half rate, except where change is made in the exercise of seniority; for the convenience of employees; or to employees working more than one shift of regular relief assignments.
- B. Payment of time and one-half, as provided in this rule, will not be considered as overtime in the application of Rule 11 (absorption of overtime)."

The Organization argues that by being required to attend this Rules class, the Claimant was performing service outside of his assigned hours for which he is entitled to his time and one-half rate of pay under Rules 5, 13 and 15, noting that the class served the Carrier's needs and was of no benefit to the Claimant, and is thus considered "work" or "service" under the Agreement, citing Third Division Award 21911. The Organization also asserts that the Carrier changed the starting time of

the Claimant's shift on the two training dates to begin at 8:00 A.M. rather than 2:30 P.M., thus entitling him to the time and one-half rate under Rules 7 and 8.

The Carrier contends that this training was taught by Safety Supervisors as part of the annual start-up and included knowledge of the Rules, track safety and technical training, was a mutually beneficial training event, and, as such, has been consistently found not to constitute either "work" or "service" as defined by the Agreement, relying on Public Law Board No. 6459, Awards 12, 13, 26 and 35; Third Division Awards 20323, 27810, 36628, 39360 and 40283. Under the principle of stare decisis, the Carrier asserts that Rules 5, 13 and 15 do not apply, citing Third Division Awards 20323, 27810 and 36628 and Second Division Award 11080. Additionally, the Carrier argues that Rules 7 and 8 are not applicable because the Claimant's shift was not changed, noting that on the two training days, the Claimant began training at 8:00 A.M., started his normal work shift at 2:30 P.M., and was allowed to leave early at 6:30 P.M.

A careful review of the record convinces the Board that this claim raises the issue of whether mandatory attendance at a training session is considered "work" or "service" as defined by the Agreement, thereby entitling the Claimants to compensation at the time and one-half rate of pay, which is an issue that has been decided and consistently applied on this property. As noted in Public Law Board No. 6459, Award 26:

"The issue that must be resolved in this case is whether mandatory attendance at a training session is considered 'work' or 'service' as defined by the Agreement, thereby entitling Claimants to compensation at the time and one-half rate of pay. Upon a review of the entire record, and the precedent cited by the parties, the Board is persuaded that this issue has already been resolved on this property in Public Law Board 6459, Award 12 and Third Division Award 36859, where the Organization's claims for overtime pay for attendance at mandatory training classes were denied under the rationale that such attendance does not constitute 'work, time or service' under the various pay provisions of the Agreement as it falls within the mutuality of interest exception to those provisions. See also, Public Law Board 6459, Award 13 and Third Division Awards

39360, 36628 where the same rationale was applied on this property in denying claims seeking premium pay for travel time to training classes, and Third Division Award 20323 adopting this rationale with respect to mandatory rules classes on a different property.”

The rationale of that Award, as well as the principle of stare decisis set forth in Third Division Award 27810, is equally applicable herein, where the Board finds such precedent not to be palpably erroneous. Third Division Award 21911, relied upon by the Organization, also confirms the application of the mutuality of benefit exception to the “work or service” Rule to classes on Operating or Safety Rules, but found that the general training program to increase the efficiency of the employee involved in that case was for the primary benefit of the Carrier. The record supports the fact that the training in this case included Safety Rules and procedures, and was part of the start-up meeting previously found to be of mutual benefit to employees and the Carrier in Public Law Board No. 6459, Award 12. Thus, no violation of Rules 5, 13 or 15 has been established.

Additionally, we are of the opinion that the Organization failed to sustain its burden of proving that the Claimant’s shift times were changed in order for him to attend his training class, which is a prerequisite to a finding of entitlement to time and one-half pay under Rules 7 and 8. Because shift times relate to hours of “work” an employee is scheduled, and the Claimant was not engaged in “work or service” when he attended the training class, the claim for additional compensation for attendance at the February 20 and 21, 2007 training classes must be denied. The record makes clear that the Claimant was paid his straight time rate of pay for his attendance at the training classes, as well as for the work he performed on the claim dates.

AWARD

Claim denied.

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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 27th day of August 2010.