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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40836
Docket No. SG-40591
11-3-NRAB-00003-080402**

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

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen**
(**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 J. C. Adamson and M. A. Blake, for three hours each for travel on January 21, 2007, four hours each for their scheduled work day and four hours each on February 2, 2007, for travel, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 6, 18 and 80, when it reduced the Claimants’ pay from 11 hours to eight hours for the time they spent traveling to Chicago, Illinois on January 21, 2007, to attend Assistant Signalman training courses and then failed to properly compensate the Claimants on their return on February 2, 2007. Carrier’s File No. 1471783. General Chairman’s File No. UPGCW-18-1450. BRS File Case No. 13995-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.

In addition to seeking an additional four hours' pay under Rules 5 and 6, this claim raises the issue of whether the provisions of Rule 18 or Appendix S, Section 4(a) apply to Assistant Signalmen traveling from their home base to attend training. These provisions provide, in pertinent part:

"RULE 18 - ROAD SERVICE (HELD OUT OVERNIGHT)

Employees sent away from home station and held out overnight will be allowed actual time for traveling or waiting during the regular working hours; in addition, travel or waiting time outside of regular hours will be paid for at straight time rate, until the employee is released from duty at location where suitable eating and sleeping accommodations are available. . . .

APPENDIX S (Establishing a new training program for Assistant Signalmen)

* * *

Section 4. (a) Assistant Signalman who are required at the direction of management to travel between work locations account being rotated to gain work experience will be paid travel time at their pro rata rate for actual time spent traveling including waiting time in route, not to exceed eight hours in any given day."

In this case the Claimants, Assistant Signalmen assigned to Gang 7042 headquartered in LaGrange, Oregon, were required to travel to Chicago, Illinois, to attend a two week training course. They traveled to Chicago on January 21 and returned home on February 2, 2007, after completing their training examination that morning. The Claimants put in for travel/waiting time of 11 hours on January

21 and 12 hours on February 2, as well as an additional four hours of work time on February 2; the Carrier compensated the Claimants eight hours of travel time on January 21, and 40 hours for each of the two weeks of training including a total of 12 hours for February 2 (eight hours of work and four hours of travel). This claim seeks the difference between their actual travel/waiting time on January 21 and February 2, as well as an additional four hours of work time for February 2 under the guaranteed eight-hour workday/40-hour workweek provisions of the Agreement.

The Organization argues that Appendix S, Section 4(a) does not apply since the Claimants were not traveling between work locations to gain work experience, and that language is restricted to Assistant Signalmen going from one gang to another to gain experience. It notes that because the Carrier consistently argues that training is not “work or service” under the Agreement, it cannot have it both ways by arguing that this training was work for purposes of the application of Appendix S. The Organization asserts that because there is no provision for travel reimbursement in Appendix S, Section 3, which covers training classes, it is proper to refer to Article 18 for the reimbursement of such travel time. Under such provision, the Organization maintains that there is no eight-hour per day limitation, and the Claimants are to be compensated for actual travel and waiting time when they are sent away from home and held out overnight, as in this case, citing Public Law Board No. 4768, Awards 23 and 67. Additionally, the Organization contends that there is an historical practice involving the payment of actual travel and waiting time for employees traveling to training, a fact which was never rebutted by the Carrier and must be accepted as factual by the Board, relying on Third Division Awards 28459 and 30460. It avers that because past practice is the best indicator of the parties’ intent, the Board should rely on it as evidence of such, citing Third Division Awards 13229, 28214 and 31424. Finally, the Organization posits that assertions are insufficient to prove the Carrier’s affirmative defense that the Claimants were paid the full 40 hours per week required, so that portion of the claim must also be sustained, relying on Third Division Award 20107.

The Carrier initially contends that the claim must be dismissed as procedurally defective because it was untimely filed, explaining that the Claimants were paid for this time period on February 10, and the claim was not filed until April 11 or received until April 14, 2007. With respect to the merits, the Carrier

argues that Appendix S applies to all aspects of Assistant Signalmen training, including compensation for travel/waiting time at the straight time rate up to eight-hours per day, under Section 4(a). First, the Carrier asserts that the Organization failed to show that the Claimants actually spent more than eight-hours per day traveling. Second, it posits that Rule 18 is not applicable because it applies to road service, not rotation of Assistant Signalmen to a training course in order to gain work experience. Third, the Carrier argues that it has an historical practice of paying a maximum of eight hours of travel time for Assistant Signalmen traveling to the training program set up under Appendix S, and that the Organization failed to sustain its burden of proving otherwise, citing Third Division Awards 12821, 26257 and 31930. It notes that the training center is a work location for the Claimants to get work experience as contemplated within the parameters of Appendix S, unlike the examples relied upon by the Organization where the Board held that mutually beneficial training is not “work or service” for purposes of the payment of overtime under the Agreement, two totally different contexts. Finally, the Carrier points to its payroll records to establish that the Claimants received 12 hours of straight-time pay for February 2, 2007, which included eight hours of pay for the work day and four hours of travel time home, in order to defeat the claim that they are entitled to an additional four hours of work time on February 2 under Rules 5 and 6.

A careful review of the record convinces the Board that there is no merit to the Carrier’s procedural objection in this case. With respect to the merits, we first deny the claim for additional compensation for work hours on February 2, 2007, because the payroll records attached to the Carrier’s declination establish that the Claimants received 12 hours’ pay for February 2, 2007, and the Carrier consistently asserted that eight hours of that were attributable to wages and that they were paid their 40 hour weekly guarantee for each week of training. The Organization did not provide evidence to rebut these facts and assertions.

The aspect of the claim dealing with traveling/waiting time is more complex. While the Board understands that a literal reading of Appendix S, Section 4(a) indicates that the eight hour travel limit applies to Assistant Signalmen required to travel between work locations to rotate to gain work experience, and that we have held that attendance at a mutually beneficial training course is not “work or service” under the provisions of the Agreement requiring overtime compensation, it is also clear that Rule 18 applies specifically to Road Service, where an employee is

required to travel until released from duty at a location where suitable overnight accommodations are available. Each provision must be read and interpreted within the context of the whole Agreement. Appendix S, in its entirety, sets forth an Agreement establishing a comprehensive training program for Assistant Signalmen, who are required to attend four separate periods of 1,040 straight-time hours some of which includes formal lab and classroom instruction, as well as on-site work experience training, and to pass examinations with respect to all study and hands-on work. Section 4 deals with travel and other compensation for Assistant Signalmen in this training program. Because the travel and waiting time, in issue in this case, specifically deals with one aspect of classroom training encompassed within the overall Appendix S training program, we agree with the Carrier that the provisions of Appendix S, Section 4(a) apply and limit such compensation to eight hours of straight time per day.

Although both the Organization and the Carrier assert the existence of a contradictory historical practice for payment of travel time in like situations, neither actually proved such practice with direct evidence rather than assertion. Because it is the Organization's burden of proving a violation of the Agreement in a contract case, and the practice is being relied upon to indicate the intention of the parties in adopting the relevant contract provision, we must conclude that this is not an affirmative defense, and that the Organization's failure to establish a practice consistent with applying Rule 18 to the reimbursement of travel/waiting time for Assistant Signalmen under the Appendix S training program rather than Section 4(a) coupled with the applicable language considered in the context of the entire Agreement, defeats this claim.

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 11th day of January 2011.