

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42461
Docket No. MW-42144
16-3-NRAB-00003-130028**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(BNSF Railway Company (former St. Louis –
(San Francisco Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when overtime pay in the amount of ninety-six dollars and one cent (\$96.01) that had been issued to Mr. C. Naumann for attending mandatory training at Sherman, Texas while he was observing vacation on November 25, 2008 was deducted by the Carrier from his paycheck in January 2009 (System File B-3300-1/12-09-0051 SLF).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Naumann shall now be paid ninety-six dollars and one cent (\$96.01).”**

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 essential circumstances leading to the instant claim are not in dispute. In 2008, Claimant C. R. Naumann, had scheduled a week of vacation beginning November 24. Carrier scheduled a safety meeting on November 25, 2008, in Sherman, Texas and informed Claimant that he was required to attend that meeting, despite the fact that he was on his scheduled vacation. As compensation for attending the safety meeting, Claimant received eight hours and 45 minutes of straight time, four hours 30 minutes of travel and \$140.00 in mileage. That pay was in addition to eight hours of vacation pay for the same day. The claim arose when Carrier reduced Claimant's pay from the overtime rate to a straight time rate (a reduction of \$96.01).

The Organization filed a claim on Claimant's behalf on February 25, 2009, in which they alleged that, since Claimant was compelled to attend a training session during his vacation, he was entitled to the penalty pay of time and one half for doing so. The Carrier denied the claim on April 28, 2009, insisting that Claimant was properly compensated and no agreement provision was violated. That denial was appealed on May 4, 2009, and was again denied. It was then progressed according to the parties' agreement, after which it remained unresolved, and is properly before the Board for resolution.

It is the position of the Carrier that arbitral precedent has consistently held that straight-time pay is the correct compensation due an employee in situations where a "mutuality of interests" exists, as in the case of training. It also insists that such instances are not considered "work," from which the Carrier receives productive benefits, and is therefore not compensable at the rate of time and one half. In support of its position, the Carrier cites numerous prior awards, including Third Division Award 20323, and Fourth Division Awards 2385 and 2390, which it argues support the principle that attendance at classes does not constitute "work, time, or service."

The Organization contends that Claimant clearly should have been compensated at the overtime rate, since the class in question was held during his scheduled vacation. Thus the deduction of the extra half time pay from Claimant's salary was in violation of the parties' collective agreement, particular Section 5 of Appendix 2 of the National Vacation Agreement, which states in part:

"If a carrier finds that it cannot release and (sic) employee for a vacation during the calendar year because of the requirements of the

service, then such employee shall be paid in lieu of the vacation the allowance hereinafter provided.

Such employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.”

The Board has read carefully the respective submissions and documentation offered by both Parties in this case. We note that Section 5, cited above refers to “work” performed during an employee’s vacation period. The Board is in agreement with considerable arbitral precedent that has found that training meets the mutuality of interest criterion and is, therefore, not subject to overtime pay. We also note that Claimant was compensated for his vacation day and for attending the training in question. Accordingly, we find that Claimant was properly compensated by the Carrier for the day he attended the safety training, and the instant claim, as stated, must be denied in its entirety.

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 31st day of October 2016.