

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44197
Docket No. MW-44490
20-3-NRAB-00003-170618**

The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly compensate Mr. R. Bell for his mandatory attendance at training sessions on his rest days of March 8 and 9, 2016 (System File T-1635U-911/1658249 UPS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Bell shall now be compensated for “*** the difference between his scheduled straight time rate of pay and overtime rate of pay for a total of eighteen (18) hours. ***”**

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.

Claimant R. Bell established and held seniority in the Track Subdepartment within the Maintenance of Way and Structures Department. At the time of the dispute, the Claimant was assigned to System Gang 0087. He was working under a consecutive compressed work half schedule. Under this type of alternative schedule, one (1) month consists of two (2) work halves and each half consists of consecutive workdays and accumulated rest days. The Claimant was assigned to a T-1 schedule, which first observes consecutive workdays and then observes consecutive rest days.

The relevant facts are not largely in dispute. In lieu of being charged with a rule violation, the Claimant elected to accept MAPS training. The Claimant was informed that he needed to attend the two-day training class to review applicable rules and safety procedures. The Claimant attended the training on Tuesday, March 8, 2016 (a regular scheduled workday) and Wednesday, March 9, 2016 (a rest day). The Claimant was paid for all hours attending the training at the straight-time rate of pay.

The Organization filed a claim by letter dated April 28, 2016 asserting that the Carrier failed to properly compensate the Claimant at the overtime rate for training service performed on his assigned rest days of March 8¹ and 9, 2016.

The Carrier denied the claim by letter dated June 6, 2016. The Carrier contended that the MAPS training the Claimant attended was "mutually beneficial" to both the Carrier and the employees and therefore the Claimant was not entitled to be compensated at the overtime rate of pay.

The Organization appealed the Carrier's denial by letter dated August 4, 2016 and reiterated the position that because the Claimant performed service on his assigned rest days, as required by the Carrier, he was entitled to be paid at his respective overtime rate for the hours he performed service in accordance with, among other things, Rule 35 of the collective bargaining agreement (Agreement).

Thereafter, the claim was handled in the usual manner, up to and including claims conference on December 7, 2016 with the parties expressing their respective positions throughout the on-property handling. The claim was properly handled by the

¹The Organization assert that March 8 was a rest day. However, there is un rebutted evidence in the record that March 8 was a regular work day.

Organization at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision, the Board has considered all the documentary evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it is the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization met its burden.

First, the question is whether the Claimant was called to perform services as contemplated by Rule 35(c). The Board finds that attendance at the MAPS training was work because the Claimant did not have a choice in attending. When training that is necessary to maintain certification or current eligibility for the employee's current assignment or training that the Carrier has mandated interferes with scheduled rest days, the training is work performed. Liability can be avoided by either rescheduling the training or the rest day. Third Division Award No. 40490 (Neutral Brent).

Second, it must be determined whether the MAPS training on the Claimant's rest day qualified for overtime pay. Rule 35 of the Agreement establishes the proper rate for services rendered on rest days and, in pertinent part, states:

“(c) CALLS - Employees notified or called to perform services not continuous with regular work assignment, on rest days, or on one of the designated holidays, will be paid a minimum of three (3) hours at the time and one-half rate for three (3) hours of service or less. If the service for which called extends beyond the minimum of three (3) hours, *employees will be paid at the overtime rates*, as specified in subsection (a) of this rule until relieved from service and afforded an opportunity for eight (8) or more hours off duty. (Emphasis added).”

In addition, Rule 40 expressly applies the rest day and overtime provisions of the rest of the Agreement to employees working an alternate schedule:

“RULE 40-ALTERNATIVE WORK PERIODS

(d) Rules in effect covering payment for service performed on rest days will apply to those accumulated rest days provided within this rule.

(e) Except for any distributed hours provided for in paragraph (c), time worked prior to or after the assigned daily hours will be paid at the overtime rate in accordance with the overtime provisions of the Agreement.”

Because the Claimant was called to service in excess of three (3) hours on his rest day, the Agreement requires payment at the overtime rate.

The Carrier’s recitation of numerous awards holding that training is to be compensated at straight time is well taken. However, the awards do not overcome the clear language of the Agreement. The specific language of Rule 35(c) states that "employees notified or called to perform services" on their rest days are entitled to a minimum call-out pay of three (3) hours at time and one-half their regular rate. If "the service for which called" extends more than three (3) hours, the employee is entitled to overtime pay for the time worked. As referenced above, the mandatory training was a call to perform services.

As Referee Knapp explained in Third Division Award 42230, the Carrier’s position regarding the refusal to pay overtime for training derives from different contract language in a different collective bargaining agreement with a different Union. The language in that collective bargaining agreement affirmatively stated that time spent in training will be paid at straight time rates even if it takes place outside of an employee’s regular assignment.

In this case, the Agreement between the parties does not exclude training that takes place on rest days as a basis for not paying overtime. Specifically, Rule 35(e) sets forth express exceptions to employees’ overtime entitlement. It states, in part:

“There will be no overtime on overtime; neither will overtime hours paid for other than hours not in excess of eight (8) hours paid for at overtime rates on holidays or for changing shifts be utilized in computing the forty (40) hours per week, nor will time paid for in the nature of arbitraries or

special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime.”

There is no language indicating that attendance at mandatory employer meetings or training sessions on one’s rest day is one of the exceptions to overtime. Hence, applying the principle of *expression unius est exclusion alterius*-- the expression of one thing is the exclusion of another, the Board concludes that where the parties expressly listed exceptions to the overtime rule, but did not include training on rest days, they did not intend to exclude the circumstance here from the payment of overtime. Since the exceptions stated do not include training as an exception to overtime, it must be included as a basis for the payment of overtime. In other words, training falls within the permissible conditions set forth in Rule 35(c) for overtime pay.

As referenced above, none of the awards cited by the Carrier interpret the specific contract language applicable to this case. The Carrier contends that Rule 35(e) is not an exhaustive list of exceptions as indicated by the use of “etc.” in the listing and that the Board should interpret it to include training of the nature covered by this claim. However, the “etc.” is in reference to “arbitraries” and “special allowances.” Training falls into neither category. Thus, the Board concludes that training was not incorporated as an exception to overtime pay on rest days under the Agreement. The record reflects that March 8 was a regular workday for the Claimant. Therefore, no overtime shall be paid for that day. The remedy is limited to overtime pay for March 9, 2016 (Claimant’s rest day), for the hours spent in training.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of September 2020.