

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44243
Docket No. MW-45461
20-3-NRAB-00003-190199

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes Division
(IBT Rail Conference
(BNSF Railway Company (Former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier recouped overtime pay issued to Mr. M. Wilson for his overtime hours on March 28, 2017 (System File T-D-5344-M/11-18-0028 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Wilson shall now ‘...be paid all the monies that were cut from him at overtime rate, for the monies improperly withheld from the claimant’s [sic]. Also should be over turned as this was NOT PROMPTLY and a violation of the agreement.’ (Emphasis in original.)”

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.

On March 28, 2017, the Carrier instructed the Claimant to attend a "Book of Rules" examination. Subsequently, the Claimant submitted his time for a regular ten (10) hour work day, plus an additional two hours and twenty (20) minutes overtime for being held on duty while traveling back to his assigned headquarters. This payment was originally approved and paid by the Carrier. Thereafter, by letter dated July 20, 2017, the Carrier issued a cut letter and disallowed the previously approved overtime payment.

Pertinent provisions of the parties' Agreement state as follows:

"RULE 50. PAY * * *

B. Employes required to make out time sheets and sign same for themselves or gang will be promptly notified in writing when said time is not allowed and the reason therefor given, and such timeroll maker will notify the employes affected. * * *

RULE 60. EXAMINATIONS

An employe directed by the Company to attend rules examinations or attend safety meetings will be paid for time necessarily lost in taking such examinations, and if required to leave his home station will be allowed actual necessary expenses."

The Carrier's recoupment of overtime pay occurred nearly four months after payment was made. In the Organization's assessment, the Carrier never provided reasonable justification or evidence to support its contention that the Claimant did not perform overtime service.

The Carrier insisted the examination constituted mutually beneficial training. However, the Organization contends this was not a situation where the Claimant attended training to better enhance his abilities on the job. Rather, this situation involved a rules test which is required to perform service for the Carrier. It references Third Division Award 40468 which states in pertinent part, as follows:

"The Carrier's written notice to the Claimant advising him of a pay reduction and its email from the Timekeeping Supervisor are evidence and do address the issue of what it was willing to pay the Claimant. But contrary

to the Carrier's assertion, these exhibits do not provide evidence as to how pay was historically applied to travel or training classes, nor do they shed light on whether any of the Rules cited by the parties do or do not support the Carrier's position.”

In that case, the Board found the Organization had met its burden to provide probative evidence, shifting the burden to the Carrier. Insofar as the Carrier failed to meet this burden, the claim was sustained.

We find that the Carrier failed to meet its contractual obligation under Rule 50 in that it did not promptly notify the Claimant in writing of any disallowance; the four-month delay in notification exceeded any reasonable concept of being “prompt.” We further find that Rule 60 is directly applicable in this case, and requires the Carrier to pay the Claimant for time lost in taking an examination. This provision does not expressly provide for overtime, and the Board declines to give the provision such an interpretation absent supporting evidence. Accordingly, the Claimant shall be compensated for two hours 20 minutes straight time.

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 23rd day of October 2020.