

## PUBLIC LAW BOARD NO. 1760

Award No. 1

Docket No. MOB-74-30  
 MOB-74-31  
 DEC-74-48  
 DEC-74-50  
 DEC-74-6  
 DET-75-1

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company  
 (Formerly Wabash Railroad)

Statement of Claim: A. On October 8, 24, 26, 31, November 5, 6, 11, 14, and 15, 1974, the Carrier advised the following Claimants that they would attend Book of Rules, Time Card and Safety classes located in their area and would not receive compensation for attending such classes, which pertain to the company rules and are initially part of the assigned duties of being an employee of the Norfolk and Western Railroad, which is in violation of our effective working agreement.

B. The following employees be paid at their respective overtime rate in their class of service for attending schools plus milage at 9¢ per mile:

	<u>Name</u>	<u>Time</u>	<u>Mileage</u>	<u>Meals</u>
MOB-74-30	Sells, R. E.	4:00 - 7:00 p.m.	31 miles	
	Turner, D.	7:00 - 10:00 p.m.	5 miles	
	Davis, J. D.	7:00 - 10:00 p.m.	16 miles	
	Davis, S. L.	7:00 - 10:00 p.m.	10 miles	
MOB-74-31	Embree, Sam Jr.	6:30 - 9:30 p.m.	20 miles	
DEC-74-48	Humphrey, J. D.	6:00 - 9:00 p.m.	42 miles	
	Kerst, R. E.	6:00 - 9:00 p.m.	9 miles	
	Bean, J. V.	6:15 - 9:15 p.m.	39 miles	
	Goodrich, G.	5:45 - 9:45 p.m.	46 miles	
	Kincade, R.	5:45 - 9:45 p.m.	46 miles	
	Fisher, G. J.	5:45 - 9:45 p.m.	46 miles	
DEC-74-50	Hobson, H. E.	4:00a.m.-1:00 p.m.	235 miles	\$1.68
	Devers, E. P.	5:00 - 10:30 p.m.	166 miles	
	Tooley, Hugh	6:00a.m.-2:00p.m.	228 miles	2.63
	Miller, Sam	5:00 - 8:30 p.m.	101 miles	
DEC-74-6	Suter, J. F.	4:30 - 6:30 p.m.		
	Warden, D. R.	4:30 - 6:30 p.m.		
	Espinosa, J.	4:30 - 6:30 p.m.		
	Cipponeri, J.	4:30 - 6:30 p.m.		
	Ish, M. T.	6:00 - 11:00 p.m.	50 miles	
	Creech, Carl	6:00 - 11:00 p.m.	50 miles	

DET-75-1      Miles M. Miller    6:30 - 9:30 p.m.  
                 Everett A. Robison   4:00 - 8:00 p.m.    120 miles  
                 Bob Weaver        4:00 - 8:00 p.m.    100 miles

Findings:    The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

Claimants in these six (6) cases, for the most part, are Maintenance of Way Foreman, Assistant Foremen, Machine Operators and Laborers. They each seek overtime compensation in varying amounts, and, in some instances, automobile mileage allowances and meal expense for the time spent, after working hours in required traveling and in required attendance at Carrier conducted classes on operating rules, safety rules, and time table instructions.

Such classes were initiated throughout Carrier's system apparently to comply with a regulation promulgated by the Federal Railroad Administration (FRA), effective January 1, 1975, which assures that each railroad employee governed by said railroad's operating rules understands such rules and that a copy of the program utilized in instructing such employees thereon is on file with the FRA on or before March 1, 1975. Said regulation emanated from the FRA's May 14, 1973, publication in the Federal Register of its intent to hold hearings on a proposed rule making and rule operation practice. Following hearings thereon, FRA, on November 19, 1974, issued the aforementioned Regulations to become effective January 1, 1975.

Carrier issued a new Safety Rule Book to become effective August 1, 1974. Said book modified some of the former safety rules and added 110 new rules therein.

On or about September 26, 1975, Bulletins were posted on Carrier's various Divisions addressed to all classes and crafts of employees governed thereby that classes on Book of Rules, Time Card and Safety

Classes were to be held, and listed the dates and locations. The Bulletins also stated that all such Classes of Employees would be required to attend one of such Book of Rule, etc., classes annually, that if one such class had been attended, then such employee, if he desired, was excused therefrom. However, it was pointed out that attendance records would be kept and failure to attend these voluntary classes would result in mandatory attendance at later makeup sessions or such employee would be held out of service until compliance was had.

The Employees argue that the practice down throughout the years, when Operating and Safety Rules classes were held, was that such classes were primarily held on Company time, and where classes were held after work hours, the employees attending were allegedly paid therefor and perhaps, in some instances, they were not. Further, that Carrier did arrange for certain employees to attend class on Company time but did not for these Claimants. Here, say the employees, there is no mutual benefit by such attendance, that such attendance is "work" or "service" (for the sole benefit of Carrier) under the scope of the agreement. Such service was for the sole benefit of Carrier and therefore Rule 30, "Overtime" - Rule 31 - "Calls and Rule 44 "Expenses" were violated. Awards favoring the employees' position were offered.

Carrier denies any obligation to reimburse these claimants. It avers that such rules class attendance was of mutual benefit and was not "work" or "service". Carrier points out that the employee derives primary benefits therefrom and is not entitled to compensation therefor. Also that the employees failed to provide any supporting negotiated rule. Further, there wasn't even a scintilla of evidence introduced to support their allegations of past practice which in any event would not have been admissible because there was no ambiguous rule to be interpreted. Carrier cited awards supporting its position.

It is assumed that none of these Claimants had previously attended a Rules class in 1974 and hence their attendance at the classes complained of was thus mandatory.

Examination of the conflicting awards cited by the parties reflects that, as here, absent specific rule on the subject matter as present in First Division Award No. 8606, on this property, that generally the purpose for which the classes are held may be determinative of whether Carrier might be held liable for compensation claimed for attendance. Generally, if the classes at which employee attendance is mandatorily required is held solely to benefit the Carrier, such as "Transportation Education Program" or "Regional Service Committees" or "First Line Supervisors' Training" as found in Third Division Awards 10808, 4790 and 3325 of the Fourth Division, respectively, claims for compensation were therefore sustained.

As was pointed out in said Award 3325:

"The purpose of the program is relevant and must be considered in each instance. If the training was for the purpose of qualifying an employee to retain his position (e.g. rules examination classes) or for the purpose of qualifying for promotion or for the purpose (among others) of learning new procedures we could not allow a claim for overtime compensation such as that requested herein. Such programs are either for the primary benefit of the employee or mutually advantageous to Carrier and employees....."

Such "mutuality of interest" is further expressed and likewise found in many other awards, such as Third Division Awards 487, 4250, 15630 and 20323.

This Board shares the opinion expressed by Referee Preston Moore in Third Division Award 10808 "....We are of the opinion that any time of the Employee directed by the Carrier is work or service, with certain exceptions. Two exceptions are where such time is for the primary benefit of the Employee and in cases where mutuality of interest exists. Awards have held that classes on operation rules and safety rules are such exceptions. We are not inclined to enlarge upon those Awards."

In the circumstance herein, this Board is constrained to find that Carrier did not violate the agreement and that the claims herein are denied. The Award is confined to the circumstances as presented herein.

Award: Claims denied.

  
A. J. Cunningham, Employee Member

  
G. C. Edwards, Carrier Member

  
Arthur T. Van Wart, Chairman and Neutral Member