PUBLIC LAW BOARD NO. 1776

PARTIES TO DISPUTE: BROTHERHOOD OF RAILROAD SIGNALMEN
and
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim for pay and/or expenses for attending classes of instruction on Operating/Timetable/Safety rules on their own time submitted by or on behalf of seventy-four (74) individuals working under the provisions of the current agreements of either the Norfolk and Western Railway Company, former Virginian Railway Company, former Pittsburgh and West Virginia Railway Company, former New York, Chicago and St. Louis Railroad Company or former Wabash Railroad Company, and the January 10, 1962 and/or September 8, 1966 merger agreements."

FINDINGS: The Board, upon the whole record and all the evidence, finds that: the employee or employees and carrier involved in this dispute are respectively employee and carrier within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the dispute involved herein, and the parties to said dispute were given due notice of hearing thereon.

While the Board has forty two separate claims before it, which cover the claims of seventy four individuals, there is one central question involved in each claim. Carrier has required signal employees to attend book of rules classes on their off-duty time. They believe that they should be paid for the time spent in the classes. Some of the claims also seek payment for expenses incurred in attending the classes. There are a number of procedural questions which have been raised in connection with the filing and handling of the claims. In view of the position which the Board must take on the central question, it will not be necessary to resolve the procedural questions.

Payment of time spent in attending Book of Rules classes is a question which has been handled by many Public Law Boards and the NRAB. The trend of decision is clearly in the direction of holding that such time is not considered work or service and, therefore, is not subject to compensation rules. Under the principle of Stare Decisis the Board is required to find that the time spent by signalmen in attending the Rules classes is not work or service and Carrier is not required to compensate them for such time.

Some of the claims before the Board seek compensation under rules governing travel expense. Since the finding must be that the employees were not engaged in work or service, rules which provide travel expenses when engaged in such service are not applicable.

The former VGN and former WAB both had rules which the employees seek to apply here. They read:

> "(VGN) Rule 1009: Such examination or re-examination as employees may be required to take will, if possible, be conducted during regular working hours without deduction in pay therefore."

> "(WAB) Rule 71: Employees, when requested by the Management, will take such examinations or re-examinations as may be required from time to time. The Carrier will set the time for such examinations so as to cause the least inconvenience to employees, and where reasonably possible during regular working hours."

The employees have shown that signal employees were given rules instructions, prior to the present program, during working hours. They argue that a practice has developed and that it arose under the rules shown above. Carrier cannot deny that signal employees formerly were given rules classes during work time but it insists that no practice has developed.

The mere fact that a thing has been done in a certain way does not mean that it has assumed a contractual status which requires that it must continue to be done in the same way. In order for a particular method to become the contractually agreed upon way to proceed there must be a showing that the parties mutually understood that the Agreement required the particular course of action. Many things are done by what has been described as "happenstance"; that is the particular way in which a thing is done is not the result of a mutual determination that a duty arises under the Agreement. The particular way in which it is done just happened, and no mutual determination can be seen in it.

The Employees filed a Section Six notice which sought to write into the Agreement a requirement that book of rules classes would be given on paid time. Not surprisingly, Carrier insists that the filing of the notice is conclusive proof that the employees understood that their agreement did not require Carrier to give the classes on paid time. The employees, of course, disagreed. They insist that they only sought clarification of ambiguous language and extension of that language to the Agreements on the property which did not contain it.

The Section Six notice by itself is not conclusive proof of the employees' understanding that their agreement did not require Carrier to schedule the rules classes on paid time. It is evidence bearing on the question, and it must be considered in connection with other evidence of record. There is no showing that the parties ever discussed the matter prior to the Section Six notice, or that either side had taken a position with respect to the disputed language. Carrier argues that Rules 71 and 1009 only pertain to examination such as eye examinations or physical examinations. It must be said that the use of the word examinations without other qualifying language does lend force to Carrier's

argument. It is common in the industry to refer to such classes as "book of rules classes" and it is difficult to accept the thesis that persons who intended to express agreement that time for such classes had to be paid would limit their expression of that agreement to a reference to "examinations" or "re-examinations".

The Board has a clear duty to insist that both parties live up to the Agreement they have made. On the other hand, it has no business extending or adding to the Agreement. If it is to find that ambiguous language plus a particular course of action add up to a practice which it will enforce, since it represents an obligation which is a part of the Schedule Agreement, it must be able to do so with a settled belief that the evidence supports that finding. The burden of proving the elements necessary to support that belief is on the proponent. When all is said and done the fact remains that here there is simply too much doubt. The preponderence of the evidence does not support the contention of the employees that an enforceable practice existed. Carrier did schedule classes on paid time in the past. However, there is no showing that either party ever connected that action with Rule 1009 and Rule 71. The rules themselves lend no real support to the employees case for it is difficult to believe that experienced negotiators in this industry would have framed them as they are framed if a conscious intention existed to apply them to book of rules classes. In addition, some weight must be given to the employees' section six notice. On balance, the finding must be that the employees were unable to show the existence of a binding past practice under the VGN and WAB rules. The other sections of the property have no rule similar to Rule 71 and 1009. The finding that no enforceable practice exists which would permit the Board to direct payment for time spent in Book of Rules classes applies to the entire property.

The employees have argued that as to certain claimants the failure to pay for time spent in the Rules classes violates the Merger Protective Agreement applicable to those employees. The applicable agreements contain arbitration clauses which provide the means of resolving disputes over their interpretation and application. The Board believes that disputes involving the merger agreement should be referred to the Committee established to handle such disputes.

AWARD:

Claim denied. Carrier did not violate the schedule agreements on the property when it required signal employees to attend book of rules classes on their own time.

William M. Edgett
Chairman and Neutral Member

V. J. Sartini
Employee Member - dissenting

J. W. Fox
Carrier Member

Dated: August 14, 1978