PUBLIC LAW BOARD NO. 2138

Award No. 1
Case No. 1
(Docket MW-21851)
(File 3523)

PARTIES TO DISPUTE: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORFOLK & WESTERN RAILWAY COMPANY
(LAKE REGION)

STATEMENT OF CLAIM:

1. The Carrier's failure and refusal to compensate Assistant Section Foreman D.R. Graves for the overtime service he rendered in going to and from and in attending a "Book of Rules-Timetable and Safety Class" on December 10, 1974 (4-1/2 hours) and the Carrier's refusal to reimburse him for the use of his personal automobile in going to and from said class (80 miles) was in violation of the basic working agreement (2-1-51) and the traditional and historical practice thereunder. (System File MW-TIP-75-2)

2. The Carrier shall now allow Assistant Section Foreman D.R. Graves 4-1/2 hours of pay at his time and one-half rate as was in effect on the claim date.

3. The Carrier shall reimburse Assistant Section Foreman D.R. Graves for the use of his personal automobile (80 miles) as provided in Agreement Rule 46.

STATEMENT OF FACTS: This dispute involves the interpretation and application of the working agreement of February 1, 1951, covering Maintenance of Way employes on the former Nickel Plate Road, which is now a part of Carrier's Lake Region.

The Petitioner asks that Claimant Graves be compensated by Carrier for time and mileage expenses incurred in the process of attending a class of instruction and examination on operating rules, safety rules and time table regulations, after his tour of duty on December 10, 1974.

For many years prior to October 1974, the practice existed (voluntarily initiated by Carrier) of compensating employees for attendance at such classes. Effective as of October 1974, such compensation was discontinued by Carrier. However, employes were still required to attend such classes and at least once annually to be examined on these safety matters.

Three separate and representative claims have been filed under File Nos. 3523, 3524 and 3525. Although different individuals are involved and the facts are slightly dissimilar, the principles involved in each of these three cases are identical and separate awards are being rendered in each case. However, the within opinion deals only with the facts and issues presented by both parties in Docket No. MW-21851 (File No. 3523).

In each claim, proper procedure was followed on the property and the appeals therefrom are now properly before this Board.

Precisely stated, this claim is for four and one-half hours compensation at time and one-half for attending a safety class after Claimant's tour of duty had ended.

Additionally, quite a number of other similar claims are now on file and pending between the principals. Assumedly, these are awaiting decision as to the representative three cases now before the Board.

OPINION:

1. Upon the whole record and all the evidence, this Board finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction of this dispute.

2. Petitioner states its basic position in the following opening sentence of its submission.

> "The basic and primary issue in each of these cases is whether service which has been recognized as compensable for over 22 years under the current agreement and for many additional years under pre-existing agreements is suddenly rendered incompensable without any change in the Agreement's rules."

Petitioner states further that since there are only minor variances in the claims, one submission has been prepared to cover all three cases and thus "hopefully avoid repetition".

Carrier responds that the current working agreement of February 1, 1951, is "barren of any negotiated provision" entitling employes to compensation for attending Rules and Safety classes. Moreover that the Agreement and the Rules cited by Petitioner apply to "actual work, time or service as these terms have been historically and customarily applied

within the industry". That the attendance at Rules classes does not constitute such "actual work, time or service". Consequently, that compensation therefor, not being within the scope of the Agreement, is optional with Carrier and can be discontinued by it at any time.

Petitioner argues, as indicated above, that the fact that this "past practice" continued without change for many years, during which new agreements were negotiated between the principals, indicates the intent of the parties to deem such "past practice" as part of the present controlling agreement. To the contrary, it seems quite logical that had the parties so intended they would have negotiated and incorporated a specific rule into the agreement in which (1) attendance at safety classes would be considered "work" covered by the agreement; and (2) requiring that Carrier compensate the employes for such attendance.

The point is, however, that no such Rule is contained in the Agreement. Nor has Petitioner directed our attention to any other Rule in which ambiguity exists, requiring the use of "past practice" to interpret or clarify such ambiguity. We would point out further that many of the very awards cited by Petitioner as binding precedent in this case specifically refer to the use of past practice as proper where there is ambiguity in a specific rule in the applicable agreement. Additionally, many of the prior Awards cited by Petitioner on this point do not deal specifically with the issue which faces us here - attendance at safety classes.

In these circumstances we concur with the most current and controlling awards which hold that in the absence of a specific showing of ambiguity in any cited Rule of the Agreement "past practice" is not controlling.

See for example Third Division Award 13994 (Dolnick) which held specifically as follows:

> "Past practice may be considered as relevant evidence when the Agreement is ambiguous or when it gives meaning and intent to such agreement. Rule 32 is not so ambiguous. The meaning and intent of the parties is clear and no past practice may be considered. Petitioner cites no other Rule in the Agreement to which such alleged past practice may apply. In the absence of any violation of the Agreement, no past practice is relevant. To give it credence would be to add another understanding to the Agreement which only the parties through negotiations can achieve. The Board has no power to add or subtract from the existing Agreement."

See also First Division Awards 9252, 14328, 16341, and 20043; Second Division Awards 3164, 4241; Third Division Awards 9221, 10796, 13677, 14679, 16807 and 18605; and Fourth Division Award 2015.

The facts indicate that the policy on the establishment of safety and rule classes and of compensating employes for time in attending such classes was discretionary and initiated unilaterally by Carrier. In view of the foregoing, therefore, and based on the above findings and controlling precedent, we find and conclude that since there is no ambiguity in the Agreement, nor any rule in the Agreement which requires Carrier to compensate Claimant for such

attendance or for mileage expenses involved therein, that the policy of compensation for such attendance can be modified, annulled or discontinued by Carrier at any time.

3. Petitioner refers us to many quoted rules of the Agreement which it contends bring "attendance at safety classes" within the ambit of their coverage. Carrier's response to this contention is twofold. Firstly, as has been pointed out above, there is no rule in the Agreement which specifically refers to "safety classes" as "work" or "service"; nor any rule requiring Carrier to compensate employes for such attendance time.

Secondly, and a far more basic issue, is Carrier's position that safety classes are not considered "service" or "work" as such terms are historically understood, accepted and defined within this industry nor as intended to be covered by the definitive language of the effective agreement negotiated between the principals and now before us.

Each of the parties has cited many prior awards as controlling precedent on this issue; nor are these awards consistent with each other. However, our careful review and analysis of prior awards dealing specifically with the issue of "safety classes" indicates that by far the overwhelming weight of authority, running over a period of many years, up to the present time, support the now established principle that "safety classes" do not come within: (1) the accepted

definitions of "work" or "service" as such terms are understood and defined in the Railroad Industry; nor (2) as such terms are understood and interpreted within the compass of the controlling agreement.

We quote from the following pertinent opinions, three in number, one of which is of long standing and the next two of more recent date. In Third Division Award No. 487 (Millard), the Board held:

> "Rule 34(c) of the Agreement between the Employes and the Carrier apply to work to which the employes are regularly assigned, and not to the special and infrequent requirements made by the Carrier of employes working in a supervisory capacity and for the purposes indicated in this claim.
>
> There is no doubt but that some inconvenience and sacrifice of time was occasioned to the Claimants by the requirements of the Carrier and the examination of the Employes to determine their familiarity with the Book of Rules and Regulations of the Operating Department; at the same time such examination was as much to the advantage of the Employes as to the Carrier, inasmuch as it constituted a means of certifying or re-certifying the employes to the requirement of the position of responsibility they held with the Carrier.
>
> Under the circumstances outlined the Board submits that schedule Rule 34(c) does not apply to special services of the character performed by the Petitioners."

Similarly, in Third Division Award No. 20323 (Sickles) the Board stated as follows:

> "The Board does not mean to suggest that the issue in dispute is so clear of resolution that reasonable minds might

> not differ in determining the appropriate application of the Agreement to the facts presented in this dispute. Nevertheless, numerous awards rendered by a number of referees have consistently determined that mandatory attendance at classes such as those in issue in this dispute, do not constitute "work, time or service" so as to require compensation under the various Agreements. Because of the consistent holdings of prior Referees, we are reluctant to overturn the multitude of Awards."

Finally, we quote from Fourth Division Award No. 3133 (O'Brien):

> "Claimants are requesting four hours compensation each account they were required to attend a safety meeting on their own time. It is their contention that when Carrier issued a bulletin to the effect that attendance at the safety class was a condition of employment and that all employes must attend, such attendance became "work" or "service" compensable under Rule 2 of the Agreement.
>
> Even though attendance at Carrier safety classes was mandatory we cannot construe such attendance to be "work" or "service" for which Claimant should be compensated. Prior Awards of this and other Divisions have held that employes required to attend periodic Rules classes, either on their assigned rest day, or outside their assigned tour of duty, are not entitled to be compensated therefor, absent a specific rule providing for such payment. See, for example Fourth Division Award No. 2385, Third Division Award No. 14202 and Award No. 7577. Just as in the claim at hand, Claimants there were required to attend periodic Rules classes and the Board opined that such attendance was not "work" or "service" for which Claimants should be compensated.

> There is no rule in the current Agreement providing compensation for the attendance at safety classes, and we do not consider such attendance work as that term is used in Rule 2. Finding no rule support for the claim, it must therefore be denied."

See also Third Division Awards 9316, 10796, 13619, 14060 and 14594. Also, Third Division Awards 4250, 7577 and 15360; and Fourth Division Awards 2385, 3133 and 3269.

We think it also pertinent to refer to two very recent Awards dealing with safety classes and therefore directly in point on this issue. See Fourth Division Award No. 3449, dated April 5, 1977, and Public Law Board No. 1790, Award No. 36, dated April 19, 1977, both holding to the same effect.

In view of the foregoing, therefore, and based upon the well established principle of "stare decisis", we are compelled to the conclusion that safety classes as such do not come within the coverage of the controlling agreement, and it was therefore Carrier's option to discontinue compensation for such attendance time as part of its managerial prerogatives.

4. Petitioner contends further that in discontinuing compensation for safety classes, Carrier violated Article VIII Section 1(c) of the Merger Agreement of January 10, 1962, in that the employes involved were placed in a "worse position". We cannot accept this contention of Petitioner as valid for two basic reasons.

Firstly, Article VIII Section 1(c) of the Merger Agreement specifically provides:

> "(c) Norfolk & Western will take over and assume all contracts, schedules and agreements between Nickel Plate and the Labor Organizations signatory hereto concerning rates of pay, rules, working conditions and fringe benefits in effect at the time of consummation of said merger, and will be bound by the terms and provisions thereof. . . ." (Emphasis added)

We stress that the above section makes specific reference to "contracts, schedules and agreements". We are referred to none such here which expressly or impliedly makes any reference to "safety classes."

Thus, in view of our findings under Paragraph "3" of this Opinion, that safety classes are not deemed "work" or "service" as commonly understood and defined in the industry or as intended to be covered by the scope of the controlling agreement, we conclude and find that such safety classes remain outside the specific coverage of the controlling Agreement and, accordingly, outside the scope of coverage of the Merger Agreement.

Secondly, the Merger Agreement specifically provides further:

> "In the event any dispute or controversy arises between Norfolk & Western and any labor organization signatory to this agreement which cannot be settled by Norfolk & Western and the labor organization or organizations involved within thirty days after the dispute arises, such dispute may be referred by either party to an Arbitration Committee for consideration and determination. . . ." (Emphasis supplied)

Petitioner contends that this provision, which provides that disputes under the Merger Agreement which cannot be settled "may" be referred to an "arbitration committee", is permissive in nature and allows the Petitioner to appeal such unsettled controversy to another forum such as, for example, The National Railroad Adjustment Board. Carrier, on the other hand, contends that the language of the Merger Agreement is"mandatory" in nature and that the only forum before which such appeals may be brought is the Arbitration Committee specifically set forth in the Merger Agreement.

This Board is of the opinion, and we so hold and find, that in the absence of an alternative forum specifically provided for in the Merger Agreement, Petitioner is required to appeal any unsettled controversy to the Arbitration Committee specifically named in the Merger Agreement and in connection with which specific procedure is set forth for its establishment. Were we to reach any other conclusion we would be modifying and amending the Merger Agreement contrary to the intent of the parties. Long established settled principles and precedents of this Board have held that we are not so authorized. We have no authority to revise, modify, delete, or add to the Agreement which has been negotiated between the principals.

For example, in Third Division Award 20289 (Sickles) the Board held:

> "The Board has recently reaffirmed that when an agreement has made specific provision for resolution of disputes by an Arbitration Committee, this Board will not inject itself into the matter. See Awards 19926 and 19950. See also Awards 17639, 16869 and 14471."

Although the use of the word "may" is permissive as to the right of appeal, the entire content of the Section last quoted is mandatory as to the forum in which the appeals are to be heard. That forum and that forum alone - the Arbitration Committee - is the only one designated by the parties to the Merger Agreement.

In consequence, we affirm the established principle and will not interject ourselves into that aspect of the dispute.

See also Third Division Awards holding similarly: 17589, 17594, 19926, 19554, 19950, 19055, 20289 and 20764.

Accordingly, for the resons stated above, we are unable to sustain the contention of Petitioner that the Merger Agreement is relevant or applicable to this dispute.

5. Finally, Petitioner raises the contention that under Section 2, Seventh of the Railway Labor Act, Carrier violated the provisions of the act by discontinuing compensation for attendance at safety classes. We are asked now to consider Petitioner's contention that a Federal Statute has been violated. We cannot agree that such matters come within the jurisdiction of this Board. This Board has no authority to consider Federal Statutes to determine whether

they have been violated. These matters are for determination by other forums. The sole function of this Board is to interpret and apply working agreements between the parties and specific claims which arise under such agreements. In this manner we are serving the function to which we are assigned and which we are authorized to perform under the Railway Labor Act.

Additionally, for the reasons stated under Paragraph "3" of this Opinion, we find that since safety classes do not come within the coverage of the working agreement, they do not come within the coverage of the Railway Labor Act, which is applicable solely to labor agreements negotiated between the principals.

In First Division Award 5402 (Simons) the Board stated:

> "It is not within the jurisdiction of this Division to determine whether or not there has been a violation of Section 2-Seventh of the Railway Labor Act."

To the same effect see also: 1st Divison Award No.6101; 2nd Division Awards 1783, 2465 and 2839; and 3rd Division Awards 2491, 4439, 5703, 5864, 6828, 19926 and 19950, among many others.

CONCLUSIONS: In concluding this Opinion, we stress the fact that the Railroad Industry is unique in nature, as are the Aviation and Sea Transportation Industries, among

others. The uniqueness lies in the fact that Management and its employes are closely and mutually interdependent on each other in matters of personal safety, safety of expensive machinery and equipment and, more important, the safety of personnel and the traveling public. Acting within this concept it is perfectly proper for Management to establish operating rules, safety standards and time tables, and to ensure that the employes are knowledgeable in these regards. The requirement that employes attend classes, formal or otherwise, and undergo examination on such knowledgeability is a reasonable procedure for this purpose.

Where such extra-curricular "service" is unduly onerous or burdensome, then of course some form of reimbursement for time spent would be advisable. But where, as here, the "service" consists of attending one session annually, and of being examined once a year, we cannot conclude that such "service" is onerous, unreasonable, or of such nature as to mandate compensation. This is particularly true where, as here, employes are not directed or compelled to attend a particular class but are permitted to elect at their option the class they wish to attend from a rather extensive schedule of different times and places. The aspect of payment, therefore, becomes in these circumstances optional with Management and can be initiated, continued or discontinued at its option, barring any provision to the contrary in the Agreement.

Specifically, in this case we do not find that the time involved in attending the safety class, or the travel incidental thereto, as being onerous or unreasonable, particularly where the choice of time and site of the class was made by Claimant and no compulsion as to these items was exercised by Carrier.

Therefore, in view of the foregoing findings and controlling precedent, and based upon the entire record before us, we hold and find that:

1. In relation to this dispute there is no vagueness or ambiguity in the rules of the agreement cited by Petitioner. Accordingly, Petitioner's contention that "past practice" is controlling here must be rejected.

2. The requirement that employes attend rules and safety classes was obviously for the mutual benefit of Employer and Employe.

3. Attendance at such classes did not constitute "work or service" as such terms are specifically defined and generally understood in this industry. In consequence such attendance was not compensable under the controlling agreement.

4. Compensation for mileage and attendance at classes was voluntarily and unilaterally established by Carrier, and, there being no specific rule in the agreement in any way applying to such compensation or requiring its continuance, Carrier had the right to discontinue such compensation at its option.

5. We stress that the Merger Agreement of 1962 does not apply to this dispute. Firstly, safety classes such as those involved here do not come within the scope of the cnntrolling collective agreement and thus not within the coverage of the Merger Agreement. Secondly, in our view the Merger Agreement compels that appeals be submitted to the Arbitration Committee therein designated; no alternative forum is mentioned. Accordingly, this Board will follow established precedent in holding such appeals to be outside the limits of its authority.

6. Finally, with respect to the claimed violation of the Railway Labor Act, we reiterate our finding that this Board has no authority to determine claims that a Federal statutue has been violated. Our jurisdiction is limited solely to disputes under existing agreements between the parties.

We are compelled to the conclusion, therefore, that this claim must be denied in toto.

AWARD: CLAIM DENIED.

Louis Norris
LOUIS NORRIS, Neutral and Chairman

H.G. Harper 10/2/78
H.G. HARPER, Organization Member

G.C. Edwards
G.C. EDWARDS, Carrier Member

DATED: Chicago, Illinois
September 15, 1978