PUBLIC LAW BOARD NO. 2138

Award No. 3
Case No. 3
(Docket MW-21853)
(File 3525)

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 Section Foreman Harvey A. Cover 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 of traditional and historical practice thereunder and additionally in violation of the Merger Agreement of January 10, 1962 (System File MW-TIP-75-1).

2. The Carrier shall now allow Section Foreman Harvey A. Cover 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 Section Foreman Harvey A. Cover 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 Cover 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 employes 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-21853 (File No. 3525).

Prior to November 1974, these safety classes were conducted rather informally at various convenient locations on the property. However, in compliance with certain Federal regulations effective March 1, 1975, requiring regular instructions to employes on safety and operating rules, Carrier issued its official Bulletin of Instructions, dated November 5, 1974, to all supervisory personnel in specific classifications, including

Claimant, to attend a class on the operating rules, safety rules and timetable being held at certain specified times, dates and locations. These instructions stated that "Sufficient classes are conveniently scheduled in order that all employes shall have an opportunity to attend without the necessity of losing time from their assignment." (Emphasis added)

The letter of instructions also contained a list of classes to be attended, with different places, dates and times, so that the employes affected could attend these classes more or less at their convenience.

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.

CONTENTIONS:

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 also contends that Carrier violated the Merger Agreement of January 10, 1962 and that it also violated Section 2, Seventh of the Railway Labor Act.

FINDINGS:

The facts in this case are precisely the same as those in Award No. 1 of this Docket. Additionally, the basic issues involved in each case and the respective principles applicable to each issue are identical.

Each of the issues and the applicable principles have been fully analysed in Award No. 1. Moreover, supporting precedential Awards and controlling authority have been cited and quoted in detail in Award No. 1 on each issue. Accordingly, we will not here repeat in full our opinion in Award No. 1.

Instead, for brevity and to avoid unnecessary repetition, we will stress our respective findings, more or less briefly. These apply fully to this dispute and merit reemphasis here as follows:

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. 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. Additionally, we are not persuaded 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. 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.

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

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

5. 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.

6. 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

controlling 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.

See detailed analysis on this issue contained in Award No. 1 of this Docket. See also precedential Awards cited and quoted therein.

7. 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 statute has been violated. Our jurisdiction is limited solely to disputes under existing agreements between the parties.

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 timetables, 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 knowledge-ability is 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 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.

In the instant case we have concluded that the Merger

Agreement of January 10, 1962 was not applicable to this dispute for two basic reasons which have been fully discussed above and in Award No. 1. Firstly, we held that since appeals were required to be made to an Arbitration Committee under the express language of that Agreement, and since no other forum of appeal had been specifically or impliedly provided for therein, that this Board was not clothed with jurisdiction to entertain disputes under said Merger Agreement.

Secondly, we held further that since the Merger Agreement applied solely to the specific items which were intended by the parties to come within the scope of coverage of the working collective bargaining agreement, and since attendance at safety classes was not one of those items and was not covered under any Rule of the collective bargaining agreement, that, accordingly, the Merger Agreement had no relevancy to this dispute.

Therefore, in view of our specific findings on the inapplicability of the Merger Agreement to this dispute, this opinion and award is to that extent predicated upon a finding that Claimant has not been adversely affected under the provisions of that Agreement.

Accordingly, in view of the foregoing findings and controlling precedent, and based upon the entire record

before us, we are compelled to the conclusion that this claim must be denied in toto.

AWARD: CLAIM DENIED.

Louis Norris
LOUIS NORRIS, Neutral and Chairman

H. G. Harper 10/24/78
H.G. HARPER, Organization Member

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

DATED: Chicago, Illinois
October 10, 1978