PUBLIC LAW BOARD NO. 6369

BROTHERHOOD OF RAILROAD SIGNALMEN

VS.

THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Award No. 2
Case No. 3

QUESTION AT ISSUE:

"If the Carrier requires employees covered by the September 13, 1999, Agreement to attend meetings or classes such as Training Camp during other than regularly assigned hours, are the employees entitled to be compensated for such time at their straight time rates as asserted by the Carrier or at their time and one-half rates as asserted by the Union?"

FINDINGS:

This Board, after hearing upon the whole record and all evidence, finds 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 of the parties, and that this Board has jurisdiction over the dispute involved herein.

The QUESTION AT ISSUE as set forth in this case is a generalization of the situation here under consideration. It is not a specifically named or dated claim. As such, the Board must consider all aspects of the situation and is not limited to the specific on-property arguments, contentions, rules and assertions which normally accompany the consideration of a specifically identified claim or grievance. When the parties mutually agreed to submit this issue to this Section 3, Second Board of Adjustment, they mutually formed the QUESTION AT ISSUE in broad terms so as to seek a decision which could and would be made applicable to any and all situations involving the attendance at a "Training Camp" which would be held "during other than regularly assigned hours."

The systemwide rules agreement which was effective September 13, 1999, between the parties is referenced by both sides to the dispute. Rule 28 has received the majority of attention in this case. Rule 28 - OVERTIME HOURS reads as follows:

"RULE 28 - OVERTIME HOURS

(a) Time worked in excess of forty (40) straight time hours in any work week shall be paid at the applicable overtime rate except where such work is performed by an employee due to moving from one assignment to another, or where days off are being accumulated.

(b) There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight (8), or ten (10) where assigned to a four day work week, paid for at overtime rates on holidays or for changing shifts, be utilized in computing the forty (40) hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime.

(c) Employees will not be required to suspend work during regular working hours to absorb overtime."

The situation which formed the genesis of this question concerns a set of circumstances in which a Signalman was required to attend a scheduled training program class on an assigned rest day of his regular assignment. For example, the Signalman was regularly assigned to a position which was scheduled to work four (4) ten hour days -- Monday thru Thursday. In this example, the Signalman attended programmed training classes on Tuesday thru Friday. Because Friday was one of the Signalman's assigned rest days, the Organization argued that he should have been paid at the time and one-half rate for attending the training class on an assigned rest day.

The Carrier argued that the training program was of mutual interest and benefit to both the Carrier and the employee and therefore the straight time rate of pay was proper under the circumstances and that such attendance at the training class was not "time worked" as referenced in Rule 28(a).

Both parties cited prior Section 3 awards which, they say, support their respective positions in this regard. In addition, the Organization contended that "since there is nothing to show that the training was of any benefit to these employees, it must be held that they were performing service outside of their regular hours . . . " (pps. 4-5 Employee Ex-Parte). On the other hand, the Carrier argued that the training program -- which has been in effect since 1995 -- was established and is conducted for the benefit not only of Signalmen but also for the benefit of employees of other

departments and, in general, covers such matters as Carrier's operating instructions and rules, general safety procedures, company policies, cardiopulmonary resuscitation, customer service, as well as federally-mandated Roadway Worker Protection Regulations. Therefore, Carrier insisted that such attendance at these training classes on an assigned rest day was mutually beneficial to both the employees and the Carrier, was not "time worked" as that term is used in Rule 28(a) and payment at the straight time rate of pay was proper.

This question does not plow new ground in the railroad industry. The basic issue of straight time payment versus overtime payment for attendance at a "mutually beneficial" training class outside of a regular tour of duty has been addressed by a multitude of Section 3 Boards of Adjustment.

Perhaps one of the more cogent discussions on this issue is found in Third Division NRAB Award No. 20323 where we read:

> "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."

Attention is also directed to the following awards, each of which made similar rulings:

Award 40 - Public Law Board 713
Award 24 - Public Law Board 6312
Second Division NRAB Award Nos. 8986, 10241, 12234, 12235, 12359, 12367, 12400, 12631, 12637, 12639
Third Division NRAB Award Nos. 7577, 10808, 20707, 20721, 30047

Each of these awards has dealt with the issue of attendance at a training or safety class which involved a genuine mutuality of interest theme in which both the employee as well as the Carrier benefited from the instruction. As such, it has been repeatedly held that such attendance at a mutually beneficial training class is not the same as "work," "time" or "service" as those terms are used in rules such as Rule 28(a).

On the basis of the presentations as made by the parties in this instance, the Board is convinced that there was a mutuality of interest in the training program here involved. Therefore, the Board finds and so rules that attendance at a Training Camp during other than regularly assigned hours where the training is consistent with the "mutuality of interest" principle, the employees who attend such classes should be compensated at the straight time rate of pay. Carrier's position in this regard is upheld.

AWARD

The question as posed in the QUESTION AT ISSUE is disposed of in accordance with these FINDINGS.

James E. Mason
Chairman and Neutral Member

William H. Robinson, Jr.
Carrier Member

C.A. McGraw
Labor Member

Issued at Palm Coast, Florida this 30th day of October, 2001.