PUBLIC LAW BOARD NO. 3445

Award No. 28
Case No. 28

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

And

Southern Railway Company

STATEMENT OF CLAIM:

Claim of Charles L. Longshore, et al., for pay at their respective rates for 2-1/2 hours at the overtime rate for May 24, 1983, account of being required to take a rules test after working hours.

FINDINGS:

Claimants, on May 24, 1983, attended a rules class at Selma, Alabama, after normal working hours. The Organization filed claim on behalf of Claimants seeking 2-1/2 hours overtime pay on account that Claimants were required to attend the above-cited rules class after working hours.

The issue to be decided in this dispute is whether the Carrier violated the Agreement by requiring Claimants to attend a rules class at a time other than during normal working hours.

The position of the Carrier is that nothing in the Agreement requires it to hold the classes during working hours. The Carrier first contends that the classes in question are for the mutual benefit of itself and its employees. In support

of its position, the Carrier cites the Federal Railroad Safety Act of 1970, which it contends was designed to better ensure railroad safety. Specifically, the Carrier cites Section 217.11(a) of Fed. Reg., Vol. 39, No. 228, stating

> "To ensure that each railroad employee whose activities are governed by the railroad's operating rules understands those rules, each railroad to which this part applies shall periodically instruct that employee on the meaning and application of the railroad's operating rules in accordance with a program filed with the Federal Railroad Administrator."

The Carrier maintains that since Federal law requires that these classes be given, they are clearly mutually beneficial in that employees are required to understand the operating rules in order to retain employment. The Carrier further cites several awards holding that rules classes serve a mutually beneficial purpose and therefore do not require that employees be additionally compensated for attending them. The Carrier maintains that these awards firmly establish that compensation is not required under the circumstances of this case.

The Carrier also asserts that the Agreement does not contemplate compensation for attending rules classes. The Carrier maintains that the Rules cited by the Organization, namely Rules 24(a) and 28, are not applicable to this Claim. The Carrier contends that both Rule 24(a) and 28 refer to "work", and that attending rules classes does not constitute "work". In support of its position, the Carrier cites several awards allegedly holding that attending rules classes is not considered "work" or "service".

Finally, the Carrier denies that its past practice has been to hold rules classes during working hours. The Carrier admits that it has held such classes during working hours, but alleges that this was the exception rather than the rule; and was only done for the convenience of the conducting officer. The Carrier cites the statements of several of its employees to verify that the normal practice is to hold rules classes at times other than normal working hours. The Carrier maintains that even if some classes were held during working hours, that practice is neither uniform nor systemwide.

The position of the Organization is that Claimants are entitled to compensation for attending the rules class during non-working hours. The Organization first contends that Claimants were following instructions from the Carrier and therefore should be paid since they were required to attend the class in question.

The Organization further contends that the Carrier's past practice has been to pay employees for attending rules classes. The Organization maintains that it is unfair and arbitrary for Carrier to pay some employees for attending classes and refuse to pay others for attending similar classes. The Organization asserts that this constitutes a discriminatory practice and should not be allowed.

A review of the applicable contract provisions compels the conclusion that the Organization's Claim must be denied.

The Carrier has established that the rules class in question was for the mutual benefit of Carrier and Claimants. The Federal regulation cited by Carrier clearly indicates

that employees are required to be familiar with operating rules. Therefore, it is not merely for Carrier's benefit that the classes are held, for without the classes employees would be uninstructed in the operating rules in violation of Federal law. We agree with those awards cited by Carrier holding that the attendance of rules classes serves a mutually beneficial purpose. Having determined that both parties benefit from the classes in question, we further find that, absent specific contractual mandates, compensation is not required for attendance of such classes. We agree with Third Division Award 3325 where the Board stated,

> "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 employe or mutually advantageous to Carrier and employes. . . ."

The Board further finds that the Agreement does not contemplate compensation for the attendance of rules classes. Rule 24(a), concerning overtime, specifically requires payment for "time worked". Similarly, Rule 28, concerning calls to perform work, specifically allows payment only when employees are called to "perform work". In the present case, we do not find that the attendance of rules classes constitutes "work" as contemplated by those Rules. We agree with those awards cited by Carrier holding that attendance of class does not equal "work" or "service". As stated earlier, since these classes

are beneficially instructive to Claimants, we do not find them to constitute "work" as contemplated by the Agreement.

Finally, with regard to Carrier's past practice, we find that Carrier has established that its normal procedure is to hold the classes at times other than normal working hours. In order to establish past practice, the Organization needs to show a uniform or system-wide practice, which it has failed to do. We find that the Carrier has adequately demonstrated that no consistent past practice regarding on-duty classes existed.

AWARD:

Claim denied.

Neutral Member

Carrier Member

Organization Member

Date: 11/13/85