

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 23

Carrier File No. DMW8 880803

Organization File No. B-Y-364

STATEMENT OF CLAIM

The Agreement was violated when the Carrier failed and refused to allow B&B Water Service Foreman R. Barth compensation for travel time and overtime incurred as a result of attending welder training school at Overland Park, Kansas between March 6, 1988 and March 18, 1988.

As a consequence of the violation, B&B Water Service Foreman R. Barth shall be allowed 11.7 hours pay at his straight time rate and 9.5 hours pay at his time and one-half rate for travel time and overtime service, respectively, incurred between March 6 and March 18, 1988.

F I N D I N G S

The Claimant, a Water Service Foreman, attended a two-week welding training program at the Carrier's technical training center in Overland Park, Kansas. He traveled from and to his headquarters point in Mandan, North Dakota prior to and following the program, which was conducted on a Monday-to-Friday schedule.

He was reimbursed for travel and other expenses and was paid on a basis of 40 hours a week for the two-week period. Claimant

submitted time claims for 6.4 hours and 5.3 hours, respectively, for time in public transportation traveling to and from the training center. In addition, he submitted a claim for 9.5 hours overtime pay for time spent beyond eight hours on nine days while at the training session.

Initially, the Organization contends that the Claimant was "directed" to attend the training program and did not volunteer to do so. There is nothing in the record to dispute this contention.

Among its defenses, the Carrier relies on a 1984 internal memorandum discussing the then proposed training center and stating, among other conditions, that "[t]he students will be paid on a straight 40-hour week basis with no additional payment allowed for travel time, overtime or weekends." The Carrier contended that this "policy" had been followed for four years prior to the initiation of this claim. The Organization points out, however, that it never agreed to the terms of this policy and that such lack of agreement had been previously acknowledged by the Carrier.

In discussing this claim, the Board necessarily separates review of its two aspects -- the pay for travel time and the alleged "overtime" during the training.

As to the travel time pay, the Organization cites Rule 35, Travel Time, which reads in pertinent part as follows:

A. Employees not in camp cars and other than those covered by Section G hereof [not applicable here] will be

allowed straight time for actual time waiting or traveling as passengers by . . . public conveyance by the direction of the Company, during or outside of regular work period including travel on rest days or holidays, either on or off an assigned territory.

In addition, the Organization submitted on the property unrebutted statements from a number of employees indicating they had been paid travel time under identical circumstances at about the same time as this claim.

In this as in the question of overtime during training, the Carrier argues the theory of "mutual benefit" to the Claimant and the Carrier. While such "mutual benefit" may well be a reality, there can be little question that in this instance the Claimant was traveling at the "direction of the Company". There is no basis to find that Rule 35 (A) is inapplicable in these circumstances.

The remainder of the claim concerns pay for the time the Claimant was participating in the training program, for which the Carrier paid him 40 hours a week. The Claimant states that he participated in the program for more than eight hours a day and thus should be entitled to "overtime" for such additional hours. Here the Organization relies on Rule 29, Overtime, which reads in pertinent part as follows:

RULE 29. OVERTIME

A. Except as otherwise provided in this Agreement, time worked preceding or following and continuous with a regularly assigned eight (8) hour work period shall be computed on actual minute basis and paid for at time and

one-half rate with double time computed on actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from starting time of employee's regular shift.

However, Awards cited by the Carrier offer a general pattern of interpretation that occurrences such as training programs can be distinguished from the definition of "work" or "service" as intended in Rule 29 or similar rules. The Claimant was paid the compensation which he would otherwise have received in his regular straight-time schedule. Since the classes were held, perhaps by coincidence, on the Claimant's regularly scheduled days, there is no issue here concerning "work" or "service" on rest days. The Board is guided by Third Division Award No. 20323 (Sickles) which states:

In Award 10808 (Moore), it was noted that there are exceptions to time consumed by an employee when directed by the Carrier as being considered "work" or "service. One of these exceptions was held to be where the circumstance contains a mutuality of interest. The Award concluded that, "Awards have held that classes on operating rules and safety rules are such exceptions." See also, Award 11048 (Dolnick), 15630 (McGovern), Fourth Division Awards 2385 and 239 (Seidenberg), 7631 (Smith), 11567 (Sempliner) and Public Law Board No. 194, Awards 24 and 25.

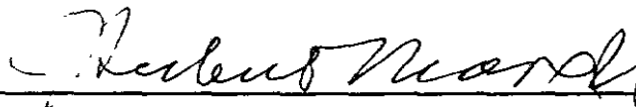
The Board does not mean to suggest that the issue in dispute is so clear of resolution that reasonable minds might not differ in determining the appropriate application of the Agreement to the facts presented in this dispute. Nevertheless, numerous Awards rendered by a number of Referees have consistently 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.

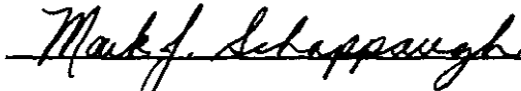
The claim for 9.5 hours overtime pay is thus found without rule support.

A W A R D

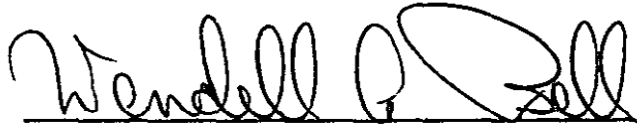
Claim sustained to the extent provided in the Findings. The Carrier is directed to place this Award in effect within 30 days of the date of this Award.



HERBERT L. MARX, Jr, Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



WENDELL A. BELL, Carrier Member

NEW YORK, NY

DATED: 11-21-91