Award No. 40
Case No. A40

PUBLIC LAW BOARD NO. 713

PARTIES TO DISPUTE: T-C Division, Brotherhood of Railway Clerks

and

Burlington Northern Inc.

STATEMENT OF CLAIM: The claim, as appealed by the Organization, reads:

"Claim is hereby presented that the Carrier violated the terms of the Agreement when it failed to properly compensate telegrapher D.M. Currie, Renton, Wash. for time and one half and travel time for ten (10) days beginning October 5th through October 15th, 1971, when required to train for Carriers Compass program.

"Carrier shall now compensate Mr. D.M. Currie time and one half for each of the ten days claimed, less time already paid, and for one hour travel time each date at the pro rata rate of pay account violation of schedule rules."

FINDINGS: Public Law Board No. 713, by reason of the Agreement dated February 25, 1971, and upon the whole record and all of the evidence, 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.

Claimant was a regularly assigned Telegrapher at Renton, Washington with hours of 2:30 p.m. to 10:30 p.m. Monday through Friday and Saturday and Sunday as rest days. He was compelled to attend ten consecutive four hour sessions in COMPASS training on each of ten consecutive days of four hours each starting Wednesday, October 6, 1971 through Friday, October 15, 1971. His class sessions were from 8:00 a.m. until noon. After such classes he reported to work at 2:30 p.m. on each of his scheduled work days. Such training sessions were held on Saturday and Sunday, October 9 and 10, 1971. Carrier paid him 40 hours - 10 days at 4 hours each - at the pro rata rate of his applicable job assignment.

Initially, Carrier argues that the claim is barred under Rule 54. The original claim dated November 30, 1971 asked merely for the difference between time and one half and straight time for the 40 hours. This was declined on December 30, 1971. On January 3, 1971 the Vice General Chairman wrote to the Superintendent amending the claim to include one hour travel time for each of the ten days at the pro rata rate.

Employes' letter of January 3, 1971 did not materially change the essence of the claim timely filed on November 30, 1971. While the language in the January 3rd letter could have been more explicit, it is nonetheless, also an appeal from the Superintendent's denial. The

Superintendent apparently considered it as such when he again declined it on January 7, 1972 without raising a time limit issue. The claim is properly before the Board on the merits.

Employes rely heavily on Award No. 7 of Special Board of Adjustment Established Pursuant to Appendix "K" - Burlington Northern, Inc. The parties were this Carrier and the Brotherhood of Railway, Airline and Steamship Clerks. That Board sustained a comparable claim for compensation to an employe who was also compelled to attend COMPASS training classes outside his regular assigned hours and on his rest days. The Board held that:

> "...that it would be inappropriate in light of existing contract provisions, to hold that the mandatory attendance at training sessions primarily conducted so that the Carrier may be able to take full advantage of and utilize the benefits of modern office technology, is excluded from the contractual proscriptions against utilizing an employe's services for more than eight hours in a day or 40 hours in a week, except upon the payment of the prescribed premium wage rates."

Continuing, that Board found that: "The several contract provisions do not purport to describe all the elements of service, which constitute 'work.' Nor, however, do these contract provisions specifically exclude training sessions from the scope of 'work'."

But Rule 49 of the Agreement in this case reads as follows:

> "Employes attending court, or detailed on any business for the Company other than relief work, shall receive compensation at the pro rata rate of the position on which service was last performed, with a maximum allowance of eight hours daily. If away from home actual necessary expenses will also be allowed. If attending court time and expenses will be certified by the Company's attorney, and the Company will receive the witness fee."

No comparable rule was before the Board that adopted Award No. 7. That Board found "that the Carrier initiated this program as a sound business venture rather than an eleemosynary gesture."

Rule 49 covers "sound business ventures" of the Carrier. Claimant was "detailed on business for the Carrier when he was compelled to attend the ten training sessions so that he would be better "equipped to carry new, and presumably more efficient operations." That being the case he is entitled to compensation only at the pro rata rate. Neither does this rule provide for travel time. ~~It provides only for expenses for attending court and the fee therefor certified by the Company's attorney. Claimant did not attend court.~~

Rule 49 is a special rule which deals with a specific subject. If the parties intended that employes attending training sessions or compulsory meetings on business for the Carrier be paid at the time and one-half rate of pay, they would have so provided in the Agreement. Instead, that rule provides for pay only at the straight time rate.

Under these circumstances, the Board is obliged to find that the Carrier did not violate the Agreement and that the claim has no merit.

AWARD

Claim is denied.

PUBLIC LAW BOARD NO. 713

David Dolnick

David Dolnick, Chairman and Neutral Member

P.A. Nemcek

P.A. Nemcek, Carrier Member

D.A. Bobo

D.A. Bobo, Employey Member

DATED: November 17, 1993