NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Form 1

Award No. 30047
Docket No. TD-29910
94-3-91-3-287

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Assn.
(
(Burlington Northern

STATEMENT OF CLAIM: "Claims of the following Train Dispatchers for 8 hours overtime rate or difference between straight time pay received and overtime rate, due to being required to attend "Team Building Workshop" on their assigned weekly rest days indicated below:

Claimant	Claim Date	Compensation claimed
G. R. Amack	June 26, 1989	8 hours overtime rate
J. A. Gold	June 27, 1989	8 hours overtime rate
T. L. Vonderschmidt	June 26, 1989	Difference between s.t./o.t.
D. J. Homer	June 27, 1989	"
H. J. Nelsen	June 28, 1989	"
D. A. Rossbach	June 28, 1989	"
D. K. Bonar	June 29, 1989	"
B. J. Tallman	June 29, 1989	"
P. C. Gardner	June 30, 1989	Difference between s.t./o.t.
T. R. Washburn	June 30, 1989	"
S. M. Knapp	Aug. 23-24, 1989	"
M. J. Sorensen	Aug. 24, 1989	"

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

During 1989, Carrier initiated a training program designed to create and foster a philosophy that would encourage and promote employee teamwork at all levels of employees within the Company. Both Agreement covered as well as non-agreement employees attended these sessions.

This case concerns a group of Train Dispatchers who were regularly assigned at Lincoln, Nebraska. By notice dated June 20, 1989, the Train Dispatchers at Lincoln were instructed to attend the training work workshops on a schedule of dates in June, 1989, with additional dates scheduled in August, 1989. Each of the claimants identified in this case attended the training workshops on an assigned rest day of their assignment. The notice scheduling the attendance by the Claimants indicated that the "workshop should last about eight hours". The record is unclear relative to the exact amount of time spent by the individual Claimants at the training workshops. It is clear, however, that two (2) of the Claimants submitted claims for payment of 8 hours at the overtime rate of pay for attending the workshop on an assigned rest day. The remaining ten (10) Claimants submitted claims for payment of the DIFFERENCE between the straight time rate and the overtime rate for 8 hours because of attending the workshop on an assigned rest day.

When the claims were initially denied, the Carrier voiced no objection or contradiction to the claims for 8 hours pay. Rather, Carrier denied the claims on the basis of them not being supported by the rules agreement. When the denied claims were appealed through the normal on-property grievance procedures, neither party addressed the issue of the length of time each Claimant spent at the training workshop. Eventually, when the claims were denied by Carrier's highest appeals officer, it was stated by Carrier <u>for the first time</u> that "Each claimant spent four hours at the seminar and was paid four hours at the straight time rate of pay". That statement remained unchallenged during the subsequent on-property handling of the dispute. Before this Board, the Organization argued that "They (Claimants) were required to devote approximately eight hours of their days primarily for the benefit of the Carrier". Before this Board, the Carrier argued initially that the training classes were "four hours" in length but later contradicted themselves by stating that "These Claimants were paid eight hours at the straight time rate for their attendance".

The Organization's argument has remained constant throughout the progression of these claims. They contend that the training classes were primarily for the benefit of the Carrier and had no discernable connection with the duties of a Train Dispatcher. They argue that Article 3(b) of the negotiated agreement demands that a Train Dispatcher must be paid at the time and one-half rate of pay

for service performed on an assigned rest day. They state that this, and other Boards of Adjustment, have held that the type of activity here involved is "service" which is subject to the time and one-half payment envisioned by Article 3(b). They cite, with favor, Third Division Awards 3462, 3966, 10062, 10808 and 17316 as well as Award 7 of a Special Board of Adjustment established pursuant to Appendix "K" of the schedule agreement covering Clerical employees on this property. The Organization rejects Carrier's reliance on Article 20 of the agreement as well as Carrier's comparison of this case with the decision rendered by Third Division Award 20707. They direct the Board's particular attention to the Organization's vigorous dissent which was filed in conjunction with Award 20707.

From the outset, the Carrier has contended that the training program here involved was of mutual interest and benefit to all employees of all crafts as well as to non-agreement employees. Because of this mutuality of interest, Carrier argues that the provisions of Article 20 as interpretated on this property by Third Division Award 20707 are equally applicable in this instance and that the pro rata rate of pay is proper compensation for attendance at such training sessions. In addition to Award 20707, Carrier has directed our attention to Third Division Awards 20323, 21267, 22704, Second Division Awards 7370, 12235 as well as Fourth Division Award 3269 in support of their position relative to the proper rate of pay for attendance at training workshops such as are involved in this case.

> Article 3(b) of the Agreement reads in pertinent part as follows:
>
> (b) SERVICE ON REST DAYS.
> A regularly assigned train dispatcher required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days.
> * * * * * * *."

Article 20 of the Agreement reads in pertinent part as follows:

> "A Train dispatcher held from service to attend court or inquest or other business on behalf of the Company, shall be paid, if an assigned train dispatcher - - the daily rate of his assignment for each day so held; ***."

The first determination which must be made in this case is whether or not attendance at the team-building training workshops here in question was "service" as that term is used in Article

3(b). This Board has previously held that where there is mutuality of interest involved in the attendance at training programs or other instances where employees are directed to attend meetings, etc., such mutuality of interest creates an exception to the general rule or rules covering payment for attendance at such sessions and does not constitute "service" or "work". The purpose and nature of the team-building training which is involved in this dispute is, in this Board's opinion, of mutual interest to both the employees and the management. Teamwork between the various groups of employees who make up a railroad operation is vital to the success of the operation. The somewhat oversimplistic reference in this case to a single act of disassembling and reassembling a toy overlooks the basic principle that teamwork is required to successfully build even a toy and is a prerequisite principle in the running of a railroad. It is our conclusion, therefore, that the previously mentioned mutuality of interest exists in this case an the exception to the general rule applies.

We have read and studied each of the Awards cited by the Organization in support of their position and find each of them distinguishable from the situation which exists in this case. In Award 3462, there existed no mutuality of interest. Rather, in that Award we read that "the Carrier took Claimant's time for its own use and benefit". In Award 3966, we find a situation in which the employee was required to "attend and investigation for the purpose of developing facts and placing responsibility in connection with the handling of a shipment of dynamite". In Award 10062, the claimant telegrapher was required to attend a meeting on his rest day "for the purpose of discussing some operational problems with the claimant". As that Award properly held, "such a meeting was primarily for the Carrier's benefit". Award 10808 recognized the mutuality of interest exception. Award 17316 involved an employee who was required to present himself at an attorney's office for a deposition in connection with a crossing accident. And even in Award 7 of the Special Board of Adjustment reference supra, we read "It should be stated at the outset that the Board finds the proffered training to be mutually advantageous to both parties". We are not convinced that any of these Awards lend support to the arguments and fact situations which exist in this case.

As previously noted, this Board has consistently held that the time of an employee which is under the direction of the Carrier is work or service WITH CERTAIN EXCEPTIONS one of which is where a mutuality of interest exists. This Board is particularly impressed with the reason and logic as expressed in Third Division Award 7577 and repeated again in Third Division Award 20323 as follows:

> "Whether or not we feel that appropriating an employe's time in this manner, absent of course a specific rule, is fair or just is not for us to say for this Board does not sit as a court of equity. We are limited to interpreting the applicable Agreement provisions as they stand. It would be exceeding our statutory function to allow compensation where the Agreement itself does not authorize it. We do not believe it would be the prerogative of this Board to attempt to do so by reading into the rules something that is not there. We feel that the employe's recourse is to negotiate with the Carrier under Section 6 of the Railway Labor Act".

Following the conclusion reached by Awards 7577 and 20323, we are faced with the determinations and ruling reached by Third Division Award 20707 which concluded as follows:

> "In the instant case if the parties had intended that employees attending training classes or on other business for the Carrier be paid at the penalty rate, they would have so provided in the Agreement. Instead, Rule 20 supra seems applicable. Since there are no specific Rules in the Agreement relating to compulsory attendance at training classes, we must assume that prior awards of the Board are controlling and that such activity is not "work" or "service". Such training is obviously of mutual benefit to the Carrier and the employees. * * * This Board is not empowered to write new rules and we do not find any current rule support for the claim herein".

Whether or not we would have ruled in the same manner as the Board did in Award 20707 is immaterial. However, it is difficult for the Board in this instance to fully understand Award 20707's reference to and reliance on Rule 20 of the existing negotiated Agreement. Inasmuch as we were not involved in the presentation to the Board or a consideration of the facts and evidence which resulted in Award 20707, we cannot say, and are not empowered to conclude that Award 20707 is or was, on its face, grossly erroneous or that it should be completely disregarded. It is a general rule in arbitration that the words of an agreement must be given their normal and ordinary meaning. In this situation, the words of agreement rule 20 clearly and unambiguously state that the rule applies to "A train dispatcher held from service to attend court or inquest or other business on behalf of the Company, * * *" (underscore ours). In the fact situation which exists in this case, the Claimants clearly were not "held from service" to attend the training sessions here in dispute. Rather, they attended the training sessions on a day on which they were not scheduled to perform service. Inasmuch as this Board has already concluded that

the attendance at the training sessions in this situation was not "service", we can and do embrace the conclusions of Award 20707 which held:

> "In the instant case if the parties had intended that employees attending training classes * * * be paid at the penalty rate, they would have so provided in the Agreement. * * * * Since there are no specific Rules in the Agreement relating to compulsory attendance at training classes, we must assume that prior Awards of the Board are controlling and that such activity is not "work" or "service". Such training is obviously of mutual benefit to the Carrier and the employees * * * This Board is not empowered to write new rules and we do not find any current rule support for the claim herein".

Conclusions similar to this have been held by a plethora of Awards such as Third Division Awards 7577 and 20323 cited earlier in this Award. We are convinced that Third Division Award 8458, which was repeated with favor in Fourth Division Award 3309, contains the principle which is dispositive of this case. There we read:

> "The issue involved in those cases is the same one we are asked to readjudicate now. The Board, as a matter of law and sound public policy, ought to adhere to the rule of res judicata. The law declares 'The awards of the several divisions of the Adjustment Board . . . shall be final and binding upon both parties to the dispute . . ' (Section 3 First (m)). This Board itself in Award 6935, (Referee Coffey), enunciated this sound policy when it said:
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> > 'If, as we maintain, our awards are final and binding, there must be an end some time to one and the same dispute or we settle nothing, and invite endless controversy instead'."

If a different result is desired by either party, it should be achieved through negotiation rather than through repeated arbitration.

It is the conclusion of this Board that the Claimants in the instant case are entitled to no additional compensation as requested in the Statement of Claim herein.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.