NATIONAL RAILROAD ADJUSTMENT BOARD
Form 1 FOURTH DIVISION Award No. 4900
Docket No. 4877
93-4-91-4-21

The Fourth Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (The American Railway & Airway Supervisors
(Association: A Division of TCU
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(Long Island Rail Road Company

STATEMENT OF CLAIM:

"1. Carrier has violated the Agreement, and in particular Rules 20(a) and 23(f) when they required Gang Foremen R. Delpiano and B. Fahey to attend a seminar on their assigned rest days and only compensated them for this service at straight time rates.

2. Because of this violative action, Carrier be required to compensate Claimant Delpiano the difference between straight time and time and one-half for his first rest day (March 7, 1990) and double time for second rest day (March 8, 1990); and to compensate Claimant Fahey the difference between straight time and time and one-half for his first rest day (March 6, 1990).

FINDINGS:

The Fourth 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.

On March 17, 1990, the Organization submitted claims concerning Foremen R. Delpiano and B. Fahey. Delpiano was required to report to a facility on his rest days to participate in an Occupational Health and Safety seminar. Fahey was required to report on one of his rest days.

The Claimants were compensated at the straight time rate for their attendance, but they assert that the overtime rate should have been paid under Rule 20 (f):

> "...service performed...on the second rest day shall be paid at double the basic straight time rate...."

and Rule 23 (a):

> "All employees shall be assigned two (2) rest days per week. If required to work on such assigned rest days these employees shall be compensated therefor at the rate of time and one half."

Carrier conceded that the Claimants attended a training class sponsored by the Safety and Training Departments concerning safety policies and procedures and drug/alcohol abuse. Because the Claimants were assigned to the training classes so that they could improve their supervisory skills regarding safety issues and the company policy regarding drug and alcohol use, they did not work or perform services. The classes are "...beneficial to both the employees as well as the Company" and thus the "mutuality of interest" concept controls.

As expressed in the Carrier's Submission, and as is reasonably inferred from the handling on the property, the Claimants attended sessions for three days and it was necessary for certain employees to spend certain rest days in attendance. Further, it is clear that the topics dealt with work related matters as it pertains to performing Supervisory duties, as contrasted to any suggestion that the seminar dealt with any particular problems that the Claimants were experiencing with safety, alcohol, drugs, etc.

There has been citation of, and reference to, a 1969 arrangement which provided for straight time compensation for a particular training session, which provided that those arrangements:

> "...pertain only to this training program and shall not constitute a waiver of any provision of present working agreements."

We do not find that said document materially aids us in resolving this dispute because it does not describe what the "provision of present agreements" may require.

It must be stressed that this Board is not constituted to sit as a Court of Equity and to resolve disputes based upon our own individual feelings as to the propriety of Carrier action. Were such the case, then we might reasonably concur with decisions such as expressed in Award 1, Public Law Board No. 2162, i.e.

> "...the requirements imposed on an individual by the employer, to be present at a time and place dictated by the employer and to occupy himself in activities ordered by the employer, are compensable service for the employee...they constitute use of the employe's otherwise free time which conforms to the concept of overtime performance...."

But, limiting our review to the jurisdiction conferred upon us, considerations other than equitable ones must prevail. In 1974 the Neutral Member of this Board authored Third Division Award 20323. Therein we noted that it was incumbent upon the Board to determine if the words "work" and "service" and "time" were broad enough to include time spent at rules classes. After conceding that reasonable minds might differ, we noted that:

> "...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."

We have reviewed the various Awards cited herein, and we are not persuaded that the Referees who have considered these matters since 1974 have formed a basis to overturn Third Division Award 20323 since, in our view, the type of attendance required here contemplated as much of a "mutuality of interest" as in the other Awards.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

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

Dated at Chicago, Illinois, this 23rd day of September 1993.