

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward No. 4933
Docket No. 4924
94-4-93-4-10

The Fourth Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

(American Railway and Airway Supervisors
(Association, Division of TCU
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railway

STATEMENT OF CLAIM:

- "1. Carrier has violated the Agreement, and in particular Rule 4 (D) when they caused Messers R. Dills, N. Massey and M. Hansen to attend Management Awareness Training Classes during other than their assigned work hours for the purpose of "Drug and Alcohol Reasonable Cause" Training and refused to compensate them as outlined in Rule 4 (D).
2. Carrier be required to pay R. L. Dills 2 hours for September 30, 1992 at time and one-half; N. Massey 4 hours for September 30, 1992; M. A. Hansen 4 hours for September 28, 1992."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimants were required by the Carrier to attend training classes on their off duty time. The Carrier argues that the FRA mandated the classes. On page 4 of its Submission the Carrier states:

"Transportation 49 CFR 219.301 (Testing for Reasonable Cause) requires that Supervisors who are responsible for determining if urine testing is required based upon a suspicion that an employee is under the influence of or impaired by a controlled substance receive at least three (3) hours of training in the signs of drug intoxication. Such training to be consistent with a program of instruction on file with the FRA under Part 217 (Operating Rules) of 49 CFR and provide information concerning the acute behavior and apparent psychological effects of the major drug group on the controlled substance list. As Claimants were Enginehouse Foremen responsible for supervising a number of "covered" employees working during their assigned shift, by regulation they were required to be familiar with and recognize the effects of the use of prohibited substances by those who they supervise."

The Carrier offered to pay the Claimants at the straight time rate. This offer was rejected, as the Claimants held they were entitled to time and one-half under the provision of Rule 4 (D), which reads as follows:

"If a Supervisor is called upon to perform work outside of the hours of his work assignment on an assigned work day but not continuous with, before or after, the hours of his work assignment, he shall be paid therefore at time and one-half with a minimum of two hours and forty minutes at such rate."

This issue has been handled many times in the past. The Agreement in this case is silent as it pertains to compensation for employees attending mandated training sessions. The majority of Awards have held that if the training sessions were of mutual benefit to both the Carrier and the employees, attendance is not considered work as contemplated by the Agreement.

In Fourth Division Award 4900 Claimants were required to attend a safety class pertaining to the use of drugs and alcohol. The subject matter of the classes in this case is similar. In Award 4900 the Board held:

"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 were experiencing with safety, alcohol, drugs, etc."

The Claimants in this case had to attend classes to comply with FRA Regulations which require that they have knowledge of how individuals react when impaired by a controlled substance. We will not contradict the findings in Fourth Division Award 4900 and will likewise hold the Claimants did not perform work or service as contemplated in Rule 4 (D). The Agreement was not violated.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Dated at Chicago, Illinois, this 22nd day of September 1994.