Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25520
Docket No. 44907
02-1-99-1-M-2068

The First Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Northern Illinois Regional Commuter Railroad (METRA)

STATEMENT OF CLAIM:

"Claim of Metra/Electric Engineer P. A. Molitor for one (1) basic day on June 16, 1998, on account that he was instructed to attend a mandatory back training class."

FINDINGS:

The First 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 were given due notice of hearing thereon.

On June 16, 1998, the Claimant, an Engineer, filed a claim for one day's pay in regards to his having been instructed to attend a mandatory back training class on the same date. In order to attend the class, the Claimant had to lay off his regular position on the extra board. The Carrier denied the claim.

The Organization argues that there is nothing in the Agreement that provides for Engineers attending the type of class in question, however beneficial it may be. Since there is no contractual obligation for the Claimant to have attended the back training

class but he was required to do so by the Carrier, the Organization argues that the claim for a basic day's pay is warranted. The Organization contends that since the Claimant was held on duty for a mandatory class, he is entitled to receive a basic day's pay for the Carrier-mandated class. The Organization refers to Rules 2, 6, 23, and 31 and Side Letter 46, arguing that they corroborate that the Organization and the Carrier have participated in negotiating Rules that allow different payments for required examinations and classes. The Organization points out that unless otherwise negotiated, the minimum payment for required service is a basic day's pay. In addition, the Organization argues that Engineers such as the Claimant are not part time workers and that any time an Engineer is required to report to service or work or performs required service for any reason, then the Engineer is entitled to be paid a minimum of a basic day unless there is a Rule negotiated to the contrary. The Organization claims that the Claimant was made to lose one basic day's pay on the guaranteed Engineer's extra board in order to attend the training class, which, the Organization argues, should be considered as a separate assignment. The Organization also argues that the Carrier's contention that the claim is procedurally defective is in error. The Organization points out that its claim contained sufficient information for the Carrier to make a judgment as to whether or not there was a violation of the Collective Bargaining Agreement and was, therefore, proper.

The Carrier denied the claim, arguing that the Organization failed to cite in its initial claim any specific Rule in the Agreement that the Carrier violated which would entitle an employee to a day's pay for attending a training class. The fact that the Organization referred to Rules 2, 6, 23, and 31 and Side Letter 46 in the appeal stage of the claim renders the claim procedurally defective. In addition, the Rules cited by the Organization do not apply to the situation in this case. The Carrier maintains that it has no obligation to research the Agreement to identify the pertinent Rules on behalf of the Organization. Therefore, the Carrier maintains that the Organization failed to meet its burden of citing the specific provisions of the Agreement that the Organization alleges were violated. The Carrier contends that if the Carrier and the Organization had intended to provide that employees would receive additional compensation for attending safety training, the parties would have established a provision to accomplish that, but that was not done. In addition, the Carrier argues that attending safety training classes is not work. The Carrier claims the training is of mutual benefit to the Carrier and the employee and time spent in such training is not work and cannot be considered as additional service for which an employee should receive additional compensation. The training, argues the Carrier, is designed to prevent employee injuries and has inherent

value for the participants. However, the Carrier concurs that employees should be compensated for actual time spent in attending training classes or time lost from their regular assignment. In this case, the Carrier agreed to pay the Claimant three hours at the straight-time rate for the actual time that he was required to attend the back training class on June 16. The Claimant was paid from the time he reported for duty until he was released. The Carrier argues that the Claimant did not lose a day's pay when he attended the class in question and that the Organization is seeking a penalty payment that is simply not provided for in the Agreement.

The parties being unable to resolve the issues at hand, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has met its burden of proof that the Claimant was entitled to one basic day of pay for attending a mandatory back training class on June 16, 1998. This case is one of a number of similar cases in which the Carrier required employees to attend a mandatory back training class. Although the Board has held in some of those cases that the Claimants are not entitled to any additional pay, this case is different. The record in this case makes it clear that the Claimant had a regular assignment on the guaranteed extra board and was required to lay off on the date in question in order to attend the mandatory back training class. Consequently, in this case, the Claimant was forced to lose one basic day's pay on the guaranteed extra board in order to attend the class.

Rule 23 states the following:

> "Employees called, or required to report without being called, and released without having performed service will be paid for actual time held with a minimum of four hours at their straight-time rate and, in case of employees assigned to an extra board, will remain first out on the extra board; if held over two hours and released without having performed service, they will be paid eight hours at their straight-time rate as provided for in Rule 1 and, in the case of employees assigned to an extra board, will be placed at the bottom of the board." (Emphasis added.)

The record reveals that the Claimant in this case was paid three hours by the Carrier for attending the back training class. Consequently, since the Board has found that the Claimant was entitled to eight hours of pay for that day, we order that the

Claimant be paid the additional five hours of straight-time pay that he should have been paid by being required to show up and then lay off from the guaranteed extra board.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 7th day of May, 2002.

CARRIER MEMBERS' DISSENT
TO FIRST DIVISION AWARD 25320
DOCKET 44907
(Referee Meyers)

The Majority committed two critical errors in reaching its decision in this case. First, the Majority erroneously concluded that the Claimant lost a day's pay when he was required to attend a training class. The Carrier noted at several points during the handling of this case on the property that there was no evidence that the Claimant lost a day's pay when he attended the training class. The Organization did not rebut the Carrier's position on this critical point and provided no evidence whatsoever to establish that the Claimant lost any pay when he attended the training class. Clearly, if the Claimant actually lost any pay in this situation, it would have been a simple matter for the Organization, as the moving party, to produce his earnings statement, showing his compensation for the day in question.

Since the Organization provided no evidence of lost earnings, even after being challenged on this point, the Majority had no basis for simply accepting the Organization's assertion that the Claimant lost a day's pay. The Award is fatally flawed on that basis alone.

The Majority compounded that initial mistake with a more grievous error when it cited Rule 23 as the basis for awarding the Claimant five hours' pay. The Majority obviously ignored the record of the handling of this case on the property, which makes no mention of Rule 23. What the record reflects is that the Organization did not cite any provisions of the applicable Agreement at the first three steps of the on-property handling. It was not until this case was discussed in conference that the Organization identified any contractual basis for the claim and at that juncture the Organization cited only Rules 6 and 31. Subsequently, the Organization also referred to Side Letter No. 46, but at no point during the handling of this case on the property did the Organization rely on or even refer to Rule 23 as the basis of its claim.

Except to remind the Organization that the rules of the Board prohibit introducing before the Board evidence and arguments that were not presented during the handling on the property, the Majority had no reason to even address Rule 23 in this Award. The Majority properly determined that the rules cited by the Organization during the handling on the property did not provide the basis for a sustaining claim, but that is as far as the decision should have gone. When the Majority determined that the Claimant was entitled to payment of five hours under Rule 23, it made a mockery of the Board's rules of procedure. By basing its decision on a Rule that was not cited on the property, the Majority has ensured that this Award will have no value as a precedent.

M. W. Fingerhut - Carrier Member