Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25321
Docket No. 44908
02-1-99-1-M-2069

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 C. R. Lough for one (1) basic day and one (1) hour and forty (40) minutes deadhead from Randolph Street to KYD and return on June 14, 1998, on account the Claimant was instructed to attend mandatory back training classes on his day off."

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 14, 1998, the Claimant, an Engineer, filed a claim for one day's pay and one hour and 40 minutes deadhead from Randolph Street to the KYD facility and return in regards to his having been instructed to attend a mandatory back training class on the same date. The Claimant involuntarily attended this class on his day off at a location other than his regular on and off duty reporting location. 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 and one hour and 40 minutes deadhead from Randolph Street to the KYD facility and return 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, 31, and 61 and Side Letters 24 and 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 will be allowed a minimum of a basic day unless there is a Rule negotiated to the contrary. 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 as having been violated by the Carrier that would entitle the Claimant to a day's pay for attending a training class, much less an hour and 40 minutes deadhead from Randolph Street to the KYD facility and return. The fact that the Organization referred to Rules 2, 6, 23, 31, and 61 and Side Letters 24 and 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 14. The Claimant was paid from the time he reported for the class until he was released. The Carrier argues that the Claimant did not lose a day's pay or any deadhead 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 not met its burden of proof that the Claimant was entitled to one basic day of pay for attending a mandatory back training class. The Organization has failed to cite any Rule which requires that such a payment be made in this type of a case. The Organization does cite Rules 2, 6, and 23, which it claims unambiguously state that the Engineers required to report for duty will be paid. In this case, the Claimant did not report for duty and did not work an eight-hour day. The Claimant was merely ordered to come to Randolph Street for a three-hour back training class. There is nothing in the Rules cited by the Organization that requires that the Claimant be paid for eight hours for attending the three-hour class.

Moreover, the Organization cites Rule 31, which demonstrates that the Organization and the Carrier have negotiated methods of payment for several different types of examinations or classes. It is interesting to note that that Rule makes it clear that if the parties desire in negotiations to include language about payment for classes, the parties have done it in the past. In the case at hand, the parties have not included any language regarding payment for back training classes. It is evident that Rule 31 has no application for this type of safety training.

However, the Organization has cited a Rule that does have some application here. Rule 61 states the following:

> "Deadheading provides for the method of payment when an employee has to deadhead to a location that is other than his normal work location."

On the date in question, the Claimant was required to attend the class at a location that was not his normal work location. He was paid for the three-hour class, but he was not paid for the one hour and 40 minutes deadhead from Randolph Street to KYD and the

return. Consequently, the Board finds that, pursuant to the Rules, the Claimant must be paid the one hour and 40-minute deadhead pay at his straight-time rate.

It is important to note that although the Carrier portrayed the three-hour payment being made "without prejudice," it is evident that the matter was never settled by the parties on the property. The Carrier made the three-hour payment to the Claimant unilaterally, and the Organization had a legitimate basis to continue to proceed on its claim. If a payment without prejudice is to function as a settlement of a case, it has to be agreed to by the parties as being without prejudice.

In rules cases of this kind, the Organization has the burden of coming forward with a Rule or some other basis to support its position. In this case, which involved an Engineer who was called in on his day off and required to attend a back training class for three hours, there is nothing in this record which requires the Claimant to be paid for the full eight hours for that day. However, as stated above, there is a Rule which requires that the Claimant be paid for his one hour and 40-minute deadhead to a location other than his regular location.

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 25321
DOCKET 44908
(Referee Meyers)

The Majority's decision in this case, which should have been the culmination of the dispute resolution process, has the unfortunate consequence of turning that process into an exercise in futility. In this case, the parties were unable to agree on the application of certain agreement rules as they pertain to compensation for an employee required to attend a training class on back safety. The dispute was neither complex nor difficult. It was a simple matter of determining whether certain rules provided that the employee was entitled to additional compensation in connection with attending the training class.

During the handling of this case on the property, the Organization initially failed to identify any Agreement rule(s) that provided for the Claimant to receive the requested payment. In fact, it was not until the case was discussed in conference that the Organization identified any pertinent provisions of the Agreement. Even at that late stage, the Organization cited only Rules 6 and 31.

The Majority, which apparently did not review the on-property record, somehow concluded that "the Organization referred to Rules 2, 6, 23, 31, and 61 and Side Letters 24 and 46 in the appeal stage of the claim." That is simply wrong. The Organization did not refer to Rule 2, Rule 23, Rule 61, or Side Letter 24 in the appeal stage or at any other time while this case was being handled on the property. Even a cursory review of the record would confirm that.

The only reason for the Majority to address Rule 2, Rule 23, Rule 61, or Side Letter 24 would have been to remind the Organization that it was improper to amend the contractual basis of its claim upon presenting the case to the Board. The Majority should have simply noted that the Board was precluded from considering the Organization's new arguments based on those Rules since they were never cited during the handling on the property. The Majority's failure in that regard is most disappointing.

Despite that initial misfire, the Majority properly found that the Claimant was not entitled to a day's pay. It was properly held that the Claimant did not report for duty when he attended the training class. Unfortunately, the Majority wandered off at that point as it addressed the question of pay for traveling to the training location and found that Rule 61 provided the basis for awarding the Claimant deadhead pay.

The first problem with the Majority's findings on this point is the fact that Rule 61 was not cited by the Organization during the handling on the property. The Majority was

precluded by the Board's rules of procedure from even considering the application of that Rule. To make matters worse, however, the Majority committed an astonishing error in quoting the following sentence as an excerpt from Rule 61:

> "Deadheading provides for the method of payment when an employee has to deadhead to a location that is other than his normal work location."

The Majority obviously relied on this alleged provision of Rule 61 in finding that "the Claimant was required to attend the class at a location that was not his normal work location," and deciding that he was therefore entitled to deadhead pay.

Incredibly, what the Majority relied on as a direct quote from Rule 61 is not found anywhere in the Rule. It is not part of the Agreement.

The "excerpt" from Rule 61 is not simply a product of the Majority's imagination, however. The very same sentence is found on Page 9 of the Organization's Submission, where it was presented as the Organization's succinct interpretation of the Rule. The Majority apparently misconstrued the Organization's position as the actual language of the Rule and used that as the basis for its findings on the question of deadhead pay.

The Majority's confusion on this point suggests that this was not a matter of rewriting the Agreement (which, of course, is beyond the Board's authority). Instead, it smacks of failure to exercise proper diligence in studying the record and crafting the decision. Unfortunately, these errors by the Majority leave the parties with a worthless decision. An Award based on non-existent agreement language is the same as no award at all. Obviously, this Award will have no value whatsoever as a precedent insofar as it concerns the question of deadhead pay.

M. W. Fingerhut - Carrier Member