

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14141
Docket No. 14024
16-2-NRAB-00002-140061**

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood Railway Carmen-Division of TCU/IAMAW
(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That the Burlington Northern Santa Fe Railroad Company violated the terms of the April 1, 1971 SLSF Agreement, specifically Rule 37, when they improperly and arbitrarily denied Carman Carman Randy Mothershead payment for wages and mileage expenses on June 5 and July 3, 2012.**
- 2. That accordingly, the Carrier be ordered to compensate the Claimant eight (8) hours pay at the applicable rate of pay for June 5 and July 3, 2012 and also reimburse him for mileage from Memphis, TN to Birmingham, AL and back to attend investigations in the amount of \$515.90.”**

FINDINGS:

The Second 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 the two dates of claim, the Claimant, a Local Chairman for the Carman, marked off his assignment at Memphis, Tennessee and travelled to Birmingham, Alabama, in order to attend two formal Investigations involving members of his Committee. The Organization filed a claim requesting that the Claimant be paid a day's pay on each date for time lost from his assignment and that he be reimbursed automobile mileage for using his personal automobile to travel to the Investigations. The Organization has cited Rule 37 in support of its claim, which reads as follows:

“Committeemen.

Rule 37. The Company will not discriminate against any committeemen who, from time to time are delegated to represent other employes and will grant them leave of absence and free transportation over the lines of this railway, so far as permitted by State and Federal Laws, in performance of such duties.”

During the handling of this case on the property, the Organization argued that there is a long standing past practice for the Carrier to pay Local Chairmen lost wages and mileage reimbursement when they mark off to represent employees at formal Investigations.

The Carrier submits that there is nothing in Rule 37 which mandates that the Carrier pay a Local Chairman when he marks off his assignment to perform what is clearly union business. Furthermore, the Carrier posits that there is no provision in Rule 37 which in any way would provide for reimbursement of auto mileage under the circumstances present herein. Relative to the transportation aspect, the Carrier notes that when this Rule was first agreed to many years ago on the former Frisco Railway, that Carrier operated passenger service and under Rule 37, Local Chairman would be permitted to ride on such passenger trains free of charge while representing other employees. Since the Carrier no longer operates passenger service between Memphis and Birmingham, the Carrier argues that the portion of Rule 37 dealing with “free transportation over the lines of this railway” is no longer relevant. Relative to the Organization's claim of past practice, the Carrier, during the handling of this case on the property and before this Board, denied the existence of such practice on the

former Frisco property and pointed out that the Organization has not offered a shred of evidence supporting its claim of a past practice.

The Board finds that the language of Rule 37 contains no provision for paying Local Chairmen, such as the Claimant, for lost time for representing employees at an Investigation and there is nothing in the Rule which provides for mileage reimbursement. Were the Board to allow the claim at bar, it would be tantamount to adding a provision to the collective bargaining agreement, which is beyond this Board's jurisdiction. While the Organization insists on the presence of a past practice allowing the payments sought herein, there is nothing in the record to support its position in this regard. As the moving party in the claim, the burden is on the Organization to supply all the elements in support of its position.

Accordingly, the Board finds neither Agreement support nor evidence of past practice to support payment of the claim.

AWARD

Claim denied.

ORDER

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 Second Division

Dated at Chicago, Illinois, this 20th day of December 2016.