

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21527**
Docket Number m-21430

William G. Caples, **Referee**

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Because of the injury sustained on February 8, 1975, the Carrier should pay to Mr. M. D. **Logsdon** the benefits set forth in Article V B (3) of 'Appendix **H**' (System File **12-3/MW-46 4/17/75**).

OPINION OF BOARD: Claimant is employed as a **Sectionman** on the **Beardstown** Seniority District of Carrier. At the time of the incident out of which this claim arises Claimant was regularly assigned to work **Monday** through Friday each week with Saturdays and Sundays designated as rest days. He was working under the **immediate** supervision of Section Foreman S. L. **Harms**.

On Saturday, February 8, 1975, a **rest** day, at **9:00** a.m. **Foreman** **Harms** telephoned Claimant to report to work as he was needed to perform work in connection with a broken rail. The parties are in accord that Claimant was under pay from the time he received the telephone call until the time at which the incident giving rise to this claim occurred. The Organization alleges Claimant was "instructed to use his personal automobile to report to Work Post 42 near Girard, Illinois to perform overtime service in connection with a broken rail." The Carrier denies this allegation.

Claimant lived at Jacksonville, Illinois. His section crew had a designated assembling point at Girard, Illinois, thirty-four (34) miles south of Jacksonville. Weekdays Claimant drove his private vehicle from his home to his assembling point. On the day of the incident Claimant drove from his home to a point where his automobile was in a collision before Claimant reached the place at which work was to be performed.

The points which this Board must decide are: 1) was or was not Claimant instructed to use his personal automobile to proceed to the place where work was to be performed on the day of the incident? 2) if Claimant was instructed was he then authorized by Carrier and deadheading under orders? If the answer to 2 is in the affirmative the following and its exceptions would be applicable:

Mediation Agreement A-8853 Dated February 10, 1971, Article V:
"Article V - Payments to **Employees** Injured Under Certain
Circumstances.

Where employees sustain personal injuries or death under conditions set forth in paragraph A below, the carrier will provide and pay such **employees**, * * * the applicable amounts set forth in paragraph B below, subject to the provisions of other paragraphs in this Article.

A. Covered Conditions -

This Article is intended to cover accidents involving employees covered by this Agreement while such employees are riding in, boarding, or alighting from off-track vehicles authorized by the carrier and are

- (1) deadheading under orders or
- (2) being transported at carrier expense

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D. Exclusions:

Benefits provided under Paragraph B shall not be payable for or under any of the **following** conditions:

* * * * *

- (6) While an **employee** is **commuting** to and/or from his residence or place of business."

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Award 21125, of the Third Division, an award to which Carrier Members had strongly dissented, covers a factually similar case where the views of **the parties** in regard to the same contract provisions are similar to those stated in this case. However, in that case the Foreman was called by the Roadmaster to report **to** work for overtime service at a certain place. The Foreman "contacted" the other Claimants who were **Sectionmen** and all were riding to the place of work in one of the **Sectionmen's** private vehicles when an accident occurred before the Claimants reached the point at which work was to be performed. From the physical facts all the men, caller and called, were together in one vehicle, coupled with the observation, "the rather extensive record before us fails to include any statements from Roadmaster Jacobs -- who called the crew * * * -- or from other Carrier Officials" lead the Referee to an assumption which while valid under that situation would not be here, **Carrier here** persistently denied any authorization had been given for the use of any particular kind of transportation to get to the job. The burden of proof is **the claimant's to** show authorization and this record does not so show. A naked allegation of "an instruction is not enough." **The Board** finds this case distinguishable from Award 21125, that there is a failure of proof of authorization.

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FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds **and holds:**

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the **Agreement** was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.