

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32295
Docket No. MW-31124
97-3-93-3-19**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Burlington Northern Railroad Company (formerly
(The Colorado and Southern Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it required Mr. D. E. Sanchez to attend a two-week welding class and then refused to compensate him for travel time from his headquarters to the class on November 3, 1991 (System File C-91-24/7MWD 92-03-19 CSR).**
- (2) The Carrier violated the Agreement when it required Mr. C. J. Garcia to attend a two-week welding class and then refused to compensate him for travel time from his headquarters to the class on November 3, 1991 and travel time to his headquarters on November 15, 1991 (System File C-91-25/7MWD 92-03-18).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant D. E. Sanchez shall be allowed twenty-four (24) hours and forty (40) minutes of pay, at his straight time rate, for travel time between his headquarters point to the site of the welding class in Lenaxa, Kansas on the date cited.**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant C. J. Garcia shall be allowed forty-nine (49) hours and forty (40) minutes of pay, at his straight time rate of pay for travel time between his headquarters point to the site of the welding class**

at Lenaxa, Kansas and back to his headquarters point on the date cited."

FINDINGS:

The Third 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.

This dispute was initially progressed as two (2) separate claims on the property, but because the issue involved in each case is identical, the claims have been combined before this Board.

D. J. Sanchez and C. J. Garcia (Claimants) have established and hold seniority within the Maintenance of Way Track Subdepartment, and were regularly assigned to positions on their respective seniority districts when this dispute arose. Claimants were advised that, beginning on November 4, 1991, they would be attending ten (10) day welder training classes at Carrier's training facility located at Lenaxa, Kansas.

On Sunday, November 3, 1991, Claimant Sanchez drove his personal vehicle from his residence in Raton, New Mexico to the training facility at Lenaxa, a distance of seven hundred forty-five (745) miles. On the same day, Sunday, November 3, Claimant Garcia also drove his personal vehicle from his residence in Trinidad, Colorado to the training facility at Lenaxa, a distance of seven hundred forty-five (745) miles. On November 15, 1991, when Claimants had completed the ten (10) day training classes, each returned to their residence, via their personal vehicle.

When Claimants returned to their regular duty, each submitted an expense report claiming compensation for the travel time incurred traveling via personal vehicle to and

from the welder training school. Said requests were denied by Carrier, thus generating the claims.

The Organization protested Carrier's denial, relying upon Rule 23 - TRAVEL TIME - TRANSPORTATION, which states in pertinent part:

"When employees are traveling by private automobile, time shall be computed at the rate of two minutes per mile traveled."

The Organization went on to note that:

"Carrier had scheduled Claimants to attend a welding school located in Lenaxa, Kansas commencing November 4, 1991. Claimants traveled by personal vehicle. Claimant Garcia traveled 745 miles each way from his home in Trinidad, Colorado. Claimant had to leave his home on Sunday, November 3, 1991 in order to arrive in time for school Monday morning. Then Claimant traveled the same distance home after the close of school on Friday November 15, 1991. Claimant Sanchez drove his personal vehicle from his home in Raton, New Mexico to the training facility, also a distance of 745 miles. At the close of school on November 15, Claimant Sanchez also returned home, via his personal vehicle.

The Carrier paid Claimants personal vehicle mileage, but refused to pay the Claimants' travel time in violation of Rule 23. The Claimants each traveled a total of 1490 miles at two (2) minutes a mile. Claimants are entitled to forty-nine (49) hours and forty (40) minutes at a straight time rate of pay."

Carrier denied the claim, asserting that the claim was "unclear" as to the actual time traveled making it impossible to distinguish payment due. Carrier went on to assert that:

Based upon the facts of this case and the agreement provisions you cite in support of your position, it is evident you have failed to substantiate that the Claimants are due the monetary consideration you seek. As the proponent of this claim the burden of proof as to its validity rests with you,

and you have failed to carry that burden. No violation of any rule or agreement has been shown.

Rule 23 is both clear and unambiguous regarding Carrier's responsibility employee travel time via personal vehicle. In pertinent part, Rule 23 provides that: "When employees are traveling by private automobile, time shall be computed at the rate of two minutes per mile traveled."

There is no dispute that Claimants Sanchez and Garcia each traveled, via their personal vehicle, to the requisite training class. Further, the claim was not "unclear" as to the actual time each Claimant traveled. In fact, the claim is quite explicit regarding the number of miles both Mr. Sanchez and Mr. Garcia, thereby rendering specious Carrier's argument regarding that facet of the claim.

Based on the uncontroverted evidence of record and the plain contract language, this claim must be sustained.

AWARD

Claim sustained.

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 Third Division

Dated at Chicago, Illinois, this 13th day of November 1997.