

Award No. 36675
Docket No. MW-34953
03-3-98-3-701

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe Railway
(former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly pay the employees assigned to Region Gang UC-03 for work performed prior to and following their regularly assigned hours on June 21, 1996 and for hours of work performed on their assigned rest day of June 22, 1996 (System File T-D-1198-H/MWB 96-11-21AO BNR).**
- (2) The Agreement was violated when the Cartier failed and refused to properly pay:**

 - (a) the employees assigned to Region Gang TP-03 and Region Gang TP-05 on November 4 through 15, 1996 (System Files B-M-5020-H/MWB 97-03-19CE and B-M-503-H/MWB 97-03-19CG);**
 - (b) the employees assigned to Region Gang TP-05 on November 18, 19 and 20, 1996 (System File B-M-501-H/MWB 97-03-19CE); and**
 - (c) the employees assigned to Region Gang RP-12 on February 10 through 26, 1997, for work performed**

prior to and preceding their regularly assigned hours (System File S-P-585-O/MWB 97-06-03AB).

- (3) As a consequence of the violation referred to in Part (1) above, each Claimant assigned to Region Gang UC-03 on June 21 and 22, 1996 shall receive a total of five (5) hours and eighteen (18) minutes pay at their respective rates of pay.
- (4) As a consequence of the violations referred to in Part (2) above:
 - (a) each Claimant assigned to Region Gang TP-03 and Region Gang TP-05 on November 4 through 15, 1996 shall '. . . receive a total of ten hours pay, at their respective rates of pay. . . .';
 - (b) each Claimant assigned to Region Gang TP-05 on November 18, 19 and 20, 1996 shall '. . . receive a total of four and one-half hours pay, at their respective rates of pay. . . .' and
 - (c) each Claimant assigned to Region Gang RP-12 on February 10 through 26, 1997 shall '. . . receive a total of 8.5 hours pay, at the one-half rate, at their respective rates of pay. . . .'"

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.

On August 5, 1996, December 18, 1996 (3) and March 5, 1997, the Organization filed five separate claims involving travel time compensation for four separate production gangs covering the period from June 1996 thru February 1997. Each claim was handled separately on the property, but they were combined in the Organization's Notice of Intent to the Board.

Essentially, the Organization finds that the payment of straight time compensation for travel time, after the 30 minutes of unpaid time, pursuant to Article XVII of the 1996 National Agreement is in error under the application of Rules 26 and 29 of the BN-BMWE Agreement. The Organization contends that, under the language of the foregoing Rules and alleged past practice, such travel time must be paid at the overtime rate. The Carrier denied the claims on grounds that Rule 35, which deals specifically with travel time pay during or outside of the regular work period, including travel on rest days or holidays at straight-time rates, is the governing contract provision.

Review of the facts, issues and contract language in the evidentiary record now before us reveals no material feature to distinguish this claim from the claims denied by the Board in Third Division Awards 36525 and 36526. In that connection, Award 36256 reads, in pertinent part, as follows:

"This claim parallels that which we considered and discussed in Third Division Award 36525 between these same parties. In both disputes the parties disagreed upon payment for 'travel time' between the lodging site and the work site. The Organization alleged that the Carrier's straight time payment of time spent traveling violated the Agreement in failing to pay overtime.

In this dispute there are some minor differences in argument, but the fact remains that the Organization failed to support a penalty payment for time spent traveling as applied to Production Gangs as directed from PEB 219. We find no rebuttal that in testimony before PEB 219, the Organization stated that 'the unpaid time spent

traveling between the lodging site and the work site was travel time' and that it needed to be changed. Clearly, Article XVII of the 1996 Agreement limited unpaid time traveling to no more than 30 minutes each way from the work site. Nowhere has the Organization provided probative evidence that payment at the time and one-half rate for travel was ever paid for travel to System Gangs created by PEB 219. We find no overtime provision in the Agreement referring to travel time. We studied the Awards cited by the Organization and do not find them on point (Third Division Awards 8825, 6683, 18033 and 21917).

Accordingly, for the reasons above as well as those discussed in Award 36525, the claim must be denied."

Even though we are not technically bound by doctrines of stare decisis or res judicata, the Board frequently has emphasized that an arbitrator with a proper regard for the arbitration process and for stability in collective bargaining should accept an interpretation by a prior arbitration dealing with the same issues, Parties and contract language as authoritative, unless it is palpably erroneous or factually distinguishable. In our considered opinion, Awards 36525 and 36526 are neither palpably erroneous nor factually distinguishable from the matter before us in the present 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 Third Division**

Dated at Chicago, Illinois, this 18th day of August 2003.