

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36751
Docket No. SG-36630
03-3-01-3-156

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and Ohio
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of S. P. Scott, M. D. Palmer and B. R. Baith for payment of travel time and mileage to and from work. Mr. Scott should receive payment for January 18 and 25, 2000, February 1, 7, 15, 21 and 29, 2000 and March 6 and 14, 2000. Messrs. Palmer and Baith should receive payment for February 7, 15, 21 and 29, 2000 and March 6 and 14, 2000. Account Carrier violated the current Signalmen’s Agreement, particularly CSXT Labor Agreement 15-093-98 when Carrier failed to pay the Claimants travel time and mileage when they were required to travel in excess of 300 miles from their residences to the work site. Carrier File No. 15 (00-0093). General Chairman’s File No. 300-O.P. BRS File Case No. 11606-B&O.”

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.

By letter dated May 15, 2000, the Organization filed a claim on the Claimants' behalf, contending that the Carrier failed to compensate them for travel time and mileage when they traveled in excess of 300 miles from their residences to their work location in Merrillville, Indiana, on the cited dates. The Carrier denied the claim, contending that the most direct route involved trips of less than 300 miles.

The Organization contends that the Carrier failed to allow the Claimants proper compensation for their travel time and mileage in excess of 300 miles from their residences to the work location on the cited dates. The Organization points out that the crux of this case is whether or not the Claimants traveled in excess of 300 miles between their residences and the work location on the dates in question. The Organization maintains that mileage maps demonstrate that the most direct highway route for each Claimant yields a trip in excess of 300 miles. The Organization contends that travel was to be on interstate highways, not back roads, and that the Claimants traveled the most direct interstate highway route from their residences to the work location.

The Organization emphasizes that the Carrier offered no proof to support its affirmative defense that the Claimants each traveled less than 300 miles. Despite several opportunities to do so, the Carrier failed to explain the method it used to calculate the mileage traveled by each Claimant. The Organization maintains that the Board has consistently held that when a carrier offers an affirmative defense, as in this case, it bears the burden of proving its assertion. The Organization argues that because the Carrier offered absolutely no proof of its assertion that the Claimants did not travel 300 miles from their residences to the work location, the Carrier's affirmative defense must be rejected.

The Organization ultimately contends that the claim should be sustained in its entirety.

The Carrier argues that in order to assure consistency, it verifies mileage claims with the Rand McNally Milemaker program. The Carrier contends that in connection with the mileage claims at issue, it checked the Claimants' addresses, and then entered their hometowns and the work location, Merrillville, Indiana, to determine the distance. The Carrier points out that Claimant Scott lives in Alger, Ohio, and not in Powell, the town shown on the Organization's WebCrawler printouts; Alger is 65 miles east of Powell, and it therefore is closer to Merrillville. The Carrier emphasizes that the Rand McNally Milemaker program establishes that the distances between Merrillville and each of the Claimants' hometowns is less than 300 miles.

The Carrier asserts that because drivers may prefer different routes and the mileage indicators on different vehicles may vary, the most reliable means of measuring mileage is through a map or a log. The Carrier has used the Rand McNally Milemaker program for more than 20 years, as the most reliable way to measure highway miles traveled. The Carrier emphasizes that this program is the only one used to verify distances for every other signal employee claiming mileage at all times relevant to the instant claim. The Carrier contends that it would not be fair or consistent to allow the Claimants to use a different, more favorable program to determine mileage for expense claims.

The Carrier further emphasized that it has not negotiated away its right to determine how to verify mileage claims, and it would be an improper usurpation of its managerial prerogative for the Board to sustain the instant claim. Under the Organization's position, the Carrier would be forced to accept any mileage expense claim based upon any computer mapping program showing any route an employee devised. This would result in chaos, in that the Carrier would have virtually no way to distinguish between a valid claim and one that was doctored. The Carrier emphasizes that the only fair and consistent way of administering mileage claims is to use one program to verify mileage expenses. The Carrier maintains that it will continue to use the Rand McNally Milemaker program until it is convinced that another program is more efficient and accurate.

The Carrier also disputes the Organization's assertion that travel distance was to be the most direct route on interstate highways. The Carrier points out that Section 2-A-4 clearly refers to "highways," not "interstate highways." The Carrier maintains that the Agreement does not require it to pay an employee for taking an interstate highway that may require him to travel more than 300 miles, when the employee could have made the trip in under 300 miles. Moreover, employees are not required to go out of their way to travel on an interstate highway to qualify for the mileage allowance and time traveled.

The Carrier ultimately contends that there has been no violation of the Agreement, and the instant claim should be denied in its entirety.

The Board reviewed the record in this case and finds that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it failed to pay the three Claimants for travel time and mileage to and from work in January, February, and March of 2000.

Section 2-A-5 provides:

"Employees required to travel off their home property (or region) in excess of three hundred (300) miles from their home to a work location will be provided prepaid airfare or mileage and travel time from their home. At the Carrier's option, however, the Carrier will work with the Organization in special circumstances."

Section 2-A-4 provides:

"The mileage in this Rule will be determined by the most direct highway miles traveled."

The Carrier argues that it has been utilizing one method of calculating the most direct mileage for 20 years, and that method has employed the Rand McNally Milemaker program. The Carrier contends that according to the Rand McNally Milemaker program, the Claimants traveled less than 300 miles and, therefore, are not entitled to benefits under Section 2-A-5. The Carrier contends that although the Rand McNally Milemaker program may have used highways other than interstate

highways in making its calculation, that is what the parties have agreed to because Section 2-A-4 states, "the most direct highway miles traveled."

The Board recognizes the Organization's problem with the current system. First of all, the Organization's method of calculation, which closely followed the routes taken by the Claimants, resulted in mileage totals that were in excess of 300 miles. The Referee made a similar calculation utilizing another computer program and, on two of the three Claimants' trips, came up with a figure in excess of 300 miles.

There are other problems that the Board finds with the Carrier's case. The Carrier states in its Submission that:

"Alger is 65 miles east of Powell, which is that much closer to Merrillville."

That is nonsensical. Alger and Powell are both in Ohio; and if Alger is 65 miles east of Powell, it simply cannot be that much closer to Merrillville, Indiana. Indiana lies to the west of Ohio. If the above information came off of the Rand McNally Milemaker program, then the efficacy of this system is seriously in doubt.

Although MapQuest and WebCrawler both showed more than 300 miles for the Claimants' trips, it is clear from this record that the Carrier has reserved to itself the selection of the manner of calculation of miles. The Rule mentions highways. It does not mention interstate highways. Consequently, although the Organization's argument makes great sense, and some of the results of the Rand McNally Milemaker program do not, the Board is powerless to sustain this claim given the history between the parties with respect to this Rule.

Recognizing the benefits of taking interstate highways for its employees, and taking into consideration the questionable results of the Rand McNally Milemaker program, it may be beneficial for the parties to discuss a different manner of calculation for the future. However, given the past practice of the parties and the current right of the Carrier to select the type of map or program on which it will base its calculations, the Board cannot take any action other than to deny the claim.

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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 22nd day of October 2003.