Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37875
Docket No. SG-37579
06-3-02-3-684

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(BNSF Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe (BNSF):

Claim on behalf of R. L. Franks and J. L. Pankey, for reimbursement for mileage expense, account Carrier violated the current Signalmen's Agreement, particularly Rule 46, when it required the Claimants to move their personal automobiles during the regular work cycle from their "old" job site to their "new" job site on various dates in August of 2001, and denied payment for mileage on the days that they traveled. Carrier's File No. 35 01 0065. General Chairman's File No. 01-108-BNSF-129-S. BRS File Case No. 12232-BNSF."

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.

The Organization contends that the Carrier violated the Agreement when it refused to properly pay claims for automobile mileage allowance filed by members of Mobile Crew No. 8. The Claimants must use their personal automobiles for transportation to and from their residences. Their vehicles are therefore parked at the work site. When the Carrier moves the worksite, sometimes hundreds of miles, the Claimants are forced to move their vehicles to the new worksite to enable them to return to their residences. The Organization points out that it would be unsafe to leave the vehicles at a previous work site; that the Carrier is unwilling to return the Claimants to their vehicles at the end of each workday; and most importantly, as attested to by the employees, the Carrier has for at least five years paid mileage allowance for moving their personal vehicles from headquarters to headquarters. The Organization maintains the Carrier has now abrogated its practice and violated the Agreement.

The Carrier argues that it has properly followed the Agreement. The applicable Rule is clear and has been correctly applied. The Carrier maintains that it did error in the past and improperly pay the mileage allowance to some gangs where they used their personal vehicles from one work point to another. However, those erroneous payments were not proper, not paid in most cases, and certainly not required to be continued simply because they were previously improperly paid. The Carrier denies that movement of worksites includes hundreds of miles. The Carrier denies that this mileage allowance was necessitated and proper by Agreement Rule 46. It maintains that the Claimants used the vehicles for their own personal convenience and the Carrier is not obligated to pay under the facts of record.

The Board studied the Organization's evidence of record. It is a signed statement by a dozen men of a mobile crew attesting to the Carrier's standard practice in the Springfield seniority district for payment under these same circumstances for some five years. Two of these Claimants also signed additional statements that on each of their mobile crews, they had been paid for moving their personal vehicles while changing headquarters. Clearly, there was past practice and this was not denied by the Carrier, although termed erroneous.

Having found a prima facie case made by the Organization and the existence of five years or more of past practice, the Board carefully studied the Agreement Rule. It is important to determine if the Rule has ambiguity which this past practice establishes as an expressive intent by the parties to continue as their binding agreement. The Rule herein disputed is Rule 46 G, which states:

> "An employee who is not furnished means of transportation by the Carrier from one work point to another work point and who uses other forms of transportation for this purpose shall be reimbursed for the cost of such other transportation. If he uses his personal automobile for this purpose in the absence of transportation furnished by the Carrier, he shall be reimbursed for such use of his automobile at the approved automobile mileage allowance. If an employee's work point is changed during his absence from the work point on a rest day or holiday, this paragraph shall apply to any mileage he is required to travel to the new work point in excess of that required to return to the former work point."

The Board does not find this to be ambiguous language. The entire Rule is predicated upon a situation where the employee "is not furnished means of transportation by the Carrier from one work point to another work point. . . ." In this record, the Carrier provided means of transportation. The Claimants requested automobile mileage allowance which would be proper "in the absence of transportation furnished by the Carrier." The fact that there exists a past practice does not herein control, when such language is clear and unambiguous in the Agreement Rule. There is no Rule violation in the Claimants' necessity in bringing their personal vehicles or the Carrier's necessity to aid the employees in retrieving their vehicles upon a move from work point to work point. Accordingly, the claim must be denied.

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 1st day of August 2006.