Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38013
Docket No. MW-37143
06-3-02-3-113

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier refused to allow personal vehicle mileage expenses submitted by Machine Operator D. R. Faught in connection with his use of personal vehicle for transportation between his designated assembly point and his work point on June 12, 13, 14, 15, 19 and 20, 2000 and when it failed and refused to properly reimburse him for the use of his personal vehicle for such purpose in accordance with Rule 35 (System File R1.620/8-00127-069).

(2) The Agreement was violated when the Carrier refused to allow personal vehicle mileage expenses submitted by Machine Operator G. A. Wahlin in connection with his use of personal vehicle for transportation between his designated assembly point and his work point on June 12, 13, 14, 15, 19 and 20, 2000 and when it failed and refused to properly reimburse him for the use of his personal vehicle for such purpose in accordance with Rule 35 (System File R1.622/8-00127-070).

(3) As a consequence of the violation referred to in Part (1) above, Claimant D. R. Faught shall now be reimbursed for fifty-two dollars ($52.00).

(4) As a consequence of the violation referred to in Part (2) above, Claimant G. A. Wahlin shall now be reimbursed for sixty-two dollars and seventy-one cents ($62.71) and for the one dollar and ninety-three cents ($1.93) that was subsequently withheld from him."

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.

There is no dispute on facts and the issue at bar is clear. The Claimants worked on Production Crew No. 1 Tie Gang as Machine Operators. They were working between Minot and Balfour on the Portal Subdivision in North Dakota, in June 2000. As Machine Operators who were required to move with their work along the Carrier's system, the Claimants were covered by Rule 35 as to transportation. With no camp cars provided, the Claimants could select lodging, or bring along their own camping facilities. Both Claimants elected to bring their own personal campers and vehicles for their work assignments.

On six days in June 2000 the Claimants elected to park their campers "at the only place available" in Velva, North Dakota, which put them halfway between the two locations at which they would be working. There is no dispute that the Claimants requested mileage reimbursement using accurate miles. However, on several days, the Carrier reduced the mileage allowance permitted due to its assessment that the distance from the designated assembling point to the nearest lodging facility was less than the Claimants traveled. On the other hand, there is no

dispute that when the distance from the Claimants' camping point was shorter than the distance allowed by the Carrier, the Claimants were not compensated for the increase in mileage permitted.

The issue is whether the Carrier is required by Rule 35 to compensate the Claimants for parking their personal camper at a midway point which allegedly was the only location where they could find suitable camper parking to work their assigned Machine Operator jobs. The Organization argues that the Claimants are due compensation, whereas the Carrier contends that they were properly compensated per Rule 35, which states, in pertinent part:

> "An employe who is not furnished means of transportation by the railroad company between designated assembling points and work point and who is authorized and willing to use his personal vehicle for such purpose shall be reimbursed for such use of his vehicle at the rate . . . per mile. . . .
>
> The designated assembling point of machine operators who are away from their outfit and not able to return the same day or who have no outfit cars, and who must obtain lodging, the nearest available suitable lodging facility to the machine operator's work point (machine location) will be considered his designated assembling point."

The focus of the dispute involves the controlling language negotiated above, i.e., "the nearest available suitable lodging facility." The Carrier asserts that this was its selected hotel and the Organization asserts that it was the "only" campground available to the Claimants. The language refers to the "designated assembling point . . . [as] the nearest available suitable lodging facility to the machine operator's work point. . . ." For the Organization to prevail, it has the burden of proving that the language selected permitted a reading that "nearest" referred to any number of locations.

There is nothing in the on-property handling to demonstrate that the Organization's reading of the language had any practice on the property. Nor do we find any evidence demonstrating that the Carrier paid from several locations at

any prior time, indicating that each separate location was seen as "nearest" for reason of personal campers or fully occupied campgrounds requiring different employees to park their personal campers in different locations. In fact, in this case, the Carrier paid the Claimants the transportation allowance from the nearest location, hotel or campground, but not from several or a multitude of different locations which the Carrier would have to verify. Nothing in this dispute evidences a history, prior payment or practice to support the Organization's position.

A review of Claimant G. A. Wahlin's payment is instructive as to what the Carrier has done. In this instance, the allegation was that the "Carrier improperly cut mileage from June 12 and 13 from forty two (42) to nine (9) miles, June 14 from forty six (46) to nine (9) miles, and June 15, 19 and 20 from forty (40) to ten (10) miles, a total reduction of one hundred ninety three (193) miles, and reduced his expense reimbursement by $62.71."

Date	Miles & Amount Paid		R.T. Miles& Amount allowed per Supv.	
6-12-00	9	$2.93	13	$4.23
6-13-00	9	2.93	13	4.23
6-14-00	9	2.93	13	4.23
6-15-00	10	3.25	13	4.23
6-19-00	10	3.25	13	4.23
5-20-00(sic)	10	3.25	13	4.23
6-21-00	54	17.55	27	8.78
TOTAL	111	$36.09	105	$34.16

The Carrier stated on the property that the Claimant "was compensated for 111 miles instead of 105 miles, therefore, owing the Carrier $193, which will be deducted from Claimant's next submitted expense account."

Accordingly, the Carrier has not violated Rule 35 in compensating the Claimants from "the nearest available suitable lodging facility to [their] work point. . . ." The Claimants were paid from the hotel (or from their campsite) depending upon which location was the nearest to their work point. There is nothing in Rule 35 that requires or suggests that the parties negotiated the a provision requiring the Carrier to calculate different mileage from different locations for each change of work. The Carrier's on-property determination that round trip mileage from the nearest lodging facility to the assembling point was 13

miles was proper, and if the Claimants' mileage from the campsite was less, then payment would be less because this is for actual transportation expenses and if the Claimants' transportation costs were more, then payment would still remain as 13 round trip miles set from the nearest lodging facility to the work point. The language does not state that the Claimant may live in either location and payment would be from either location selected. Certainly the Claimants can elect to live in their own camper, but the Carrier by the language of Rule 35 is required to reimburse them from the nearest facility as it did here. 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 25th day of October 2006.