

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38204
Docket No. MW-37758
07-3-03-3-120

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to allow Machine Operator T. A. Blumhagen the proper mileage reimbursement for all miles incurred in using his personal vehicle for transportation between his designated (lodging) assemble points and work points during the month of July 2001 (System File R1.698/8-003196-383).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. A. Blumhagen shall now receive mileage reimbursement for the equivalent of five hundred seventy-two (572) miles at thirty-four and one-half cents (.345¢) per mile in the amount of one hundred ninety-seven dollars and thirty-four cents (\$197.34)."

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.

At the time this claim was filed, the Claimant was assigned as a Tamper Operator working Monday through Thursday on the Portal Subdivision. The Organization contended that the Claimant had been erroneously denied corporate lodging at Harvey, North Dakota, and was forced to drive from his home in Velva, North Dakota, to the work site at Martin, and subsequently to the work site at Annamoose. The Organization maintained that the Claimant's residence had, therefore, become his designated lodging or assembly point, and he was entitled to full payment of mileage reimbursement from his home to the respective job sites. The claim pointed out that the Claimant traveled 42 miles each way for five days from Velva to Martin (a total of 84 miles each time) and 35 miles each way from Velva to Annamoose. It noted that the Carrier allowed the Claimant only the mileage from the lodging facility at Harvey, North Dakota, to Martin and to Annamoose, rather than for the entire distance from his home to the work site.

In support of its position the Organization cited Rule 35 – Travel Time and Expense for Employees Required to Live Away from Home Throughout their Work Week. The applicable portions of that Rule – the preamble and 35(c) – read, in pertinent part, as follows:

“The railroad Company shall provide for employe who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in camp cars, camps, highway trailers, campers, hotels or motels as follows:

* * *

- (c) An employe in such service [work away from headquarters] shall be furnished with free transportation by the Company in traveling from his headquarters point to another point, and return, or from one point to another. If such transportation is

not furnished, he will be reimbursed for the cost of rail fare if he travels on other rail lines or the cost of other public transportation used in making the trip; or if he has an automobile which he is willing to use and the Company authorizes him to use said automobile, he will be paid an allowance of seventeen (17) cents for each mile or in accordance with applicable Company policy, in traveling from his headquarters point to the work point, and return, or from one work point to another."

In its denial of the claim the Carrier disputed the Organization's allegation that the Claimant had been denied lodging. It stated that lodging was provided within a 30-mile radius of the assembly point. However, the Claimant chose to travel home instead. The Carrier also protested that there is nothing in the Agreement that provides that if an employee elects to stay at home, then his home becomes his assembly point. It contended that there was no violation of Rule 35, because the Claimant was not required to live away from home, "inasmuch as his home was within close proximity to the work location," and he was not compelled to lodge away. It pointed out that the fact that the Claimant resides within a 50-mile radius of his work location persuaded him to live at home.

The Board reviewed this case and the applicable Agreement language carefully. Initially, it must be noted that there is no indication, save the Organization's unproven assertion, that the Claimant was denied lodging at Harvey. We concur with the Carrier that the Claimant is not free to designate his own assembly point - in this case his own home - and then claim mileage for the distance from his home to the job site. The Carrier paid the Claimant mileage from the Carrier's designated assembly point and the job site. There is no indication in the record that the Carrier has, at any time, allowed employees to designate their own homes as assembly points or headquarters under the meaning of the Agreement. The Board concurs with the finding in Third Division Award 23317:

"... it would be unreasonable to interpret [this rule] to arbitrarily fix claimant's designated assembly point at the location he chose for lodging."

Moreover, we concur with similar findings contained in Third Division Award 38013, in which the Board noted:

“ . . . The focus of the dispute involves the controlling language negotiated above, i.e., ‘the nearest available lodging facility. . . .’ 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.”

As in those cases, we find that the Claimant’s preference for living at home, rather than at a designated lodging facility nearer the actual assembly point, does not obligate the Carrier to reimburse him for mileage he incurred because he chose to remain at his own home.

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 May 2007.