

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40325
Docket No. MW-40039
10-3-NRAB-00003-070247
(07-3-247)**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated Agreement when it failed and refused to allow Mr. R. Fisher to report to his bulletin assignment (per Bulletin Award TW-116A dated June 1, 2005) on Welding Crew 41F at Tomah, Wisconsin, and instead held him on his former position on Welding Crew 411 at Winona, Minnesota through July 8, 2005 (System File C-22-05-220-01/8-00319-399 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Fisher shall now be compensated for:**

1. time spent commuting from his home in Sparta, WI to Winona, MN and return over that which he would have been required to travel to his assignment at Tomah, WI. As a result, claimant traveled an additional 80 miles each day from June 1 through July 8, 2005 – calculated at 2 minutes per mile.

**2 min per mile x 80 miles = 160 minutes x 9 days = 1440
minutes ÷ by 60 minutes = 24 hours**

2. out-of-pocket mileage expenses incurred by the claimant over that which he would have incurred had he been released – calculated at 80 miles per day @\$0.405 per mile.

80 miles x .405 cents = \$32.40 x 9 days = \$291.60”

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 arose, the Claimant was working as a Welder Foreman assigned to Crew No. 411 headquartered at Winona, Minnesota. The Claimant exercised his seniority and accepted assignment to a Welder Laborer position headquartered at Tomah, Wisconsin, and was assigned thereto effective June 1, 2005 by Bulletin Award No. TW-116A. He was held on his prior position until July 8, 2005.

The instant claim, filed August 25, 2005, alleges that the Claimant incurred additional travel time spent commuting and additional out-of-pocket mileage while the Carrier improperly withheld him from reporting to his bulletin assignment as Welder-Laborer headquartered at Tomah, Wisconsin.

The Carrier denied the claim and contended throughout the handling of this dispute on the property that the Claimant was properly paid in accordance with the

headquartered position and location worked at Winona, Minnesota. The Carrier asserted that the Claimant was held on his former position until such time as his position could be filled. Moreover, the Carrier argues that there is no language in the Agreement which supports the instant claim.

The pertinent provisions of Rule 8 read as follows:

“RULE 8 - BULLETINS – NEW POSITIONS OR VACANCIES

* * *

(e) An employee assigned to a position on bulletin, unless engaged in temporary or special service, or on leave of absence in accordance with provisions of Paragraphs (a) and (b) of Rule 17, must accept the position and perform service thereon within ten (10) calendar days from the date of the assignment or forfeit his rights to the position.

NOTE: In the application of Rule 8(e) in a case where the supervisor fails to release the employee sufficient to permit him assuming work on the new position to which he is assigned within a period of ten (10) calendar days from the date of assignment, the ten (10) calendar day period will be extended sufficient to include the delay, with the understanding that when the employee is released, he will then proceed to his new position without further delay.”

This same issue has previously been decided on this property and the Organization’s position has not prevailed. In Third Division Award 40091, the Board held:

“The burden was on the Organization to demonstrate that the Carrier violated the relevant language cited. (Third Division Award 31359) Careful consideration of the record in its entirety demonstrates that the Organization did not meet its burden. The note to Rule 8(e) clearly allows the Carrier to hold an employee on a

position until such time as qualified relief is available. There is no penalty for doing so, nor does the Agreement specify a time frame in which the employee must be released.

The record shows that the Claimant was properly paid straight time and overtime on the position he actually worked. While headquartered at Columbus, Wisconsin, and until he was released, Claimant was not entitled to pay or mileage for commuting from his home to that location. Moreover, the Organization has not identified a rule or agreement provision to support payment for compensation on the Cross System Production Crew prior to the time he reported and performed service at that location.”

Also see, Third Division Award 40225. There is no basis for a finding that these Awards are palpably erroneous. On the contrary, their logic and reasoning are persuasive and directly applicable in the instant case. In the absence of Agreement or Rule support, this 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 March 2010.