

****CORRECTED****

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40340
Docket No. MW-40387
09-3-NRAB-00003-080225**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(CP Rail System (former Delaware and Hudson
(Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly compensate Mr. D. Jordan in connection with his expense account submitted for the month of March 2005 (Carrier’s File 8-00467 DHR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Jordan shall now receive payment of the remaining difference from the aforesaid March 2005 expense account in the amount of two hundred fifty-two dollars and twenty-five cents (\$252.25).”**

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.

This claim involves the interpretation and application of Rule 22.1, Automobile Expenses, which provides that the Carrier will reimburse qualified employees (per Rule 21) 21 cents/mile "by the most direct route." There is no dispute that the Claimant qualified for this mileage reimbursement, that he submitted his expense report for March 2005 allegedly based upon his actual miles driven, and was informed by Manager Dragland that he should resubmit the mileage using Mapquest. The Claimant was reimbursed only for the Mapquest calculated mileage, and the instant claim was initiated seeking the difference, stating that this was a change in policy from the accepted past practice of reimbursement for the actual safe mileage driven, and a violation of the Agreement. The record on the property is sparse, as it appears that a different claim was being processed by the parties simultaneously protesting the Carrier's dismissal of the Claimant toward the end of March 2005 for submitting falsified expense reports; both parties make reference to arguments included therein without specifying the particulars.

The Organization argues that the Carrier was obligated to make the mileage reimbursement under Rule 22.1 based upon the actual safe miles driven by the Claimant, as it had done so consistently in the past, had accepted them as an accurate reflection of the most direct route, and never presented any evidence indicating that the Claimant did not take the most direct route, citing Third Division Award 27879. It asserts that there is no reference to Mapquest in the Rules and there was no agreement to use it rather than actual safe miles driven, and that the record contains no evidence from Mapquest at all. The Organization notes that Mapquest is not a reliable source of information on mileage from point A to point B because it is dependent on the information input, and does not take into account road closures and construction detours. The Organization made clear on the property that the claim and expense report for March 2005 dealt only with the time period that the Claimant was still employed, and argues that there is no evidence supporting the Carrier's assertion that the claims were falsified.

The Carrier contends that this claim is based upon a change in policy, and that the Organization has not met its burden of establishing such a change. It notes that the Manager explained that Mapquest is used to spot discrepancies and then a physical confirmation is conducted. The Carrier asserts that it does not dictate the route an employee takes, only that reimbursement is for the most direct route under Rule 22.1, and that the Claimant was reimbursed for the mileage shown to be the most direct

route for March 2005. It notes that the Claimant was dismissed for falsifying his expense reports, so any argument that a past practice was established because he was not previously caught cannot be accepted to determine his entitlement.

A careful review of the record convinces the Board that Rule 22.1 does not permit the Carrier to mandate the payment of mileage reimbursement based solely on Mapquest, because it does not necessarily provide the most direct route from the employee's point of origin to his point of destination, and is dependent upon the exact information input into its data base. In the absence of agreement of the parties to using that methodology for determining the most direct route, the Carrier violated Rule 22.1 by reimbursing the Claimant for only the Mapquest miles for his qualified trips in March 2005 rather than the claimed actual miles driven as set forth on his original expense report for March 2005. If the Carrier has evidence that such mileage was falsified or did not represent the most direct route for the trips taken, it failed to present it in the record in this case. Accordingly, the Claimant will be reimbursed at the proper mileage rate for the difference between the mileage already paid and the mileage submitted on the expense account reimbursement form filed by Claimant on May 28, 2005, for the dates of March 1, 4, 21, and 24, 2005.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of March 2010.