

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40427
Docket No. MW-39800
10-3-NRAB-00003-060614
(06-3-614)**

The Third Division consisted of the regular members and in addition Referee Michael D. Gordon when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF 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 pay mobile gang employe M. Haberer the Rule 38 Week-End Travel Allowance for the one hundred sixty-two (162) mile round trip he made between April 17 and 21, 2003 from his gang lodging and assembly location at Crete, Nebraska to his residence in Hastings, Nebraska and returning to the Crete lodging and assembly location or for the one hundred twenty-seven (127) mile round trip he made between April 25 and 28, 2003 from his gang lodging and assembly location at Crete, Nebraska to his residence and returning to the gang lodging and assembly location in Fairmont, Nebraska [System File C-03-T072-22/10-03-0369(MW)BNR].**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. M. Haberer shall now ‘. . . be paid \$50.00 for his Travel Allowance for these two round trips as settlement of this claim.’”**

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 Claimant holds seniority in the Track Sub-department. At all relevant times, he was assigned to Mobile Gang TSCX0385 within Seniority District 400.

The Claimant's home is in Hastings, Nebraska. As a member of TSCX0385, he lived away from his home during his regular Monday-Friday workweek.

On Thursday April 17, 2003, the Claimant, and other gang members, rode in a Carrier vehicle 35 miles from Crete, Nebraska (then the gang's assembling point and lodging site) to Fairmont, Nebraska, where he switched to his personal car and drove 46 miles to Hastings for his weekend rest days. On April 21, he drove 46 miles back to Fairmont in his personal car, which he left there, and obtained transportation in a Carrier vehicle to return 35 miles to Crete (still the gang's lodging site).

On Friday, April 25, the Claimant again was a passenger in a Carrier vehicle for the 35 miles from Crete to Fairmont. At the end of his work day, he drove 46 miles to his home in Hastings for weekend rest. On April 28, after his personal weekend, he drove 46 miles to Fairmont in his own car where he began work because his gang had moved its assembling point there.

The Organization asserts, without reference to evidence, that the trips were outside of work hours. Yet, it is unclear when the Claimant was on paid time during his trip segments to and from his home. For some unexplained reason, his April 17 trip to Fairmont occurred on Thursday, rather than on his normal last workweek day, Friday. The only direct evidence is Roadmaster G. Swanson's statement that "on the dates in question . . . [the Claimant] was traveling to Crete (from Fairmont) in a company vehicle on company time (07:30 start). . . ." Because the Claimant did not travel from Fairmont to Crete before beginning work on April 28, Swanson's statement can apply to the Claimant's April 21 return to work.

The Claimant applied for a \$25 weekend travel allowance for each weekend round trip. He calculated that his back and forth trips between Hastings and Crete totaled 162 miles the first weekend and 120 miles the second weekend. The Carrier denied the allowance, calculating each trip at 96 miles (Fairmont to Hastings and back) which failed the minimum mileage requirement in Rule 38 II.¹

The Organization argues that claimed mileage is measured from the Claimant's designated lodging and assembly point (Crete) to his home residence (Hastings). It seeks \$25.00 for each weekend or \$50.00 total. It reasons that (1) Rule 38 II unambiguously pays all actual travel incurred (2) nothing excepts mileage traveled in a Carrier vehicle (3) this is the latest Carrier effort to avoid paying travel allowances (4) the Rule's history and past practice support its reading and (5) arbitration decisions support its position.

The Carrier responds (1) the Claimant traveled less than 100 miles (2) the claim is inconsistent with Rule 38 II's plain language (3) "for miles actually traveled" means more than traveling and distinguishes between whether the employee traveled home or transported in Carrier vehicles, or was on Carrier time, because travel allowances are not intended to cover all travel (4) arbitral precedent does not support the claim and (5) no damages have been proven.

¹The parties' mileage calculations differ by a few miles, but the number is irrelevant to the core issue of whether a round trip was more or less than the required 101 miles.

Rule 38 II provides, in part:

“(a) At the beginning of the work season employees are required to travel from their homes to the initial reporting location, and at the end of the season they will return home. This location could be hundreds of miles from their residence. During the work season the carrier's service may place them hundreds of miles away from home at the end of each work week. Accordingly, the carriers will pay each employee a minimum travel allowance for all miles actually traveled by the most direct highway route for each round trip.

0 to 100 miles	\$0.00
101 to 200 miles	\$25.00

* * *

Accordingly, a \$25 payment is due for each 101-200 mile round trip to the employee's home that begins ‘at the end of each work week’ ‘for all miles actually traveled by the most direct highway route for each round trip.’”

The ambiguities in this dispute are (1) at what point in time does the travel allowance potentially begin and (2) from what location is mileage measured. The Carrier is mistaken to the extent that it contends the travel allowance depends on the nature of the transportation. The Organization errs when it measures travel as the distance to and from the “end of week lodging site” or from the “gang lodging and assembly location” rather than miles “actually traveled” starting at the end of each workweek.

On this record, evidence about the Claimant's work/pay status en route from Crete to Fairmont on April 17 and April 25 is insufficient to prove that he had ended his workweek when he left Crete in the Carrier's vehicle. Therefore, the 34 miles between those geographic points do not count for the first leg of either round trip. Moreover, these 34 miles also are excluded from April 21 based on Swanson's statement that the Claimant drove the Carrier vehicle on paid time. Likewise, the Claimant's April 28 return to work cannot include the 34 miles between Fairmont and

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Crete because he reported to and resumed work in Fairmont, not Crete. Thus, the proven miles for both disputed trips total 92 miles or less than the required 101 minimum.

Accordingly, the claim is 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 14th day of May 2010.