

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35630
Docket No. MW-33437
01-3-96-3-966**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Burlington Northern Railroad Company (former Fort
(Worth and Denver 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 compensate Group 3 Machine Operator D.G. Roberts for the expenses he incurred while he was assigned away from his assigned headquarters at Childress, Texas on October 2 through 13, 1995 (System File F-95-23/MWD951226AA FWD).**
- (2) As a consequence of the violation referred to in Part (1) above, Group 3 Machine Operator D. G. Roberts shall be ‘ . . . compensated 508 miles at 2 minutes a mile, for a total of 16.9 hours at the Group 2 Machine Operator’s time and one half rate of pay for travel time incurred (127 miles each trip) from Childress, Texas to Amarillo, Texas on the dates of October 2, and 9, 1995. Also the return trips from Amarillo to Childress, Texas on the dates of October 6, and 13, 1995. (These trips were made outside of regularly working hours.)’ and he shall be compensated for his meal and lodging expenses in the amount of five hundred seventy-six dollars and seventy-three cents (\$576.73).”**

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 all times pertinent to this claim in October 1995, the Claimant resided in Amarillo, Texas, but was regularly assigned as a Group 3 Machine Operator (Chase Tamper BNX 5600168) on Surfacing Gang S-228, headquartered at Childress, Texas. This claim for Rule 23 and Rule 24 expense reimbursement arose in October 1995, after the Claimant agreed to a request from Roadmaster Vaughn to accept temporary reassignment to a gang headquartered at Amarillo, Texas, to run the Jackson 6700 Tamper (BNX 5400241) during the weeks of October 2 - 6 and October 10 - 13, 1995, while the regularly assigned operator of that machine was on vacation. However, background facts concerning a prior similar situation in March 1995, presented on the property by the Organization and never refuted by the Carrier, are relevant and material to proper disposition of the instant claim. Thus, the record shows that in March 1995, the Claimant and another operator (Eugene Matejo) were assigned to headquartered positions on surfacing gang S-153 headquartered at Plainview, Texas, when Roadmaster Vaughn temporarily moved this gang to Amarillo, Texas. On that occasion, the Claimant submitted Rule 23 and 24 claims for "full expenses" on account of working away from his regular headquarters, which Roadmaster Vaughn paid despite protesting that the claiming employees resided in Amarillo, Texas.

On or about September 28, 1995, Roadmaster Curry, the Claimant's regular Supervisor, acted as middleman for a request from Roadmaster Vaughn that the Claimant again accept temporary assignment from Childress to Amarillo to cover the above-described vacation absence in October 1995. According to signed written statements by Machine Operator Rowland and Machine Operator Coody, who participated in and/or monitored radio communications between the Claimant, Roadmaster Curry and Roadmaster Vaughn, the Claimant conditioned his acceptance of the temporary assignment on Roadmaster Vaughn's payment of Rule 23 and 24 expenses like he had paid under protest in March 1995. Written statements from the Claimant, Machine Operator Rowland and Machine Operator Coody, which were never

effectively refuted on the property, show that Roadmaster Curry informed the Claimant that Roadmaster Vaughn had agreed to his condition of payment of full expenses and that Claimant Roberts should report to Amarillo, Texas, at start of shift Monday, October 2, 1995. (The contrary statement of Roadmaster Vaughn included with the Carrier's Submission comes too late to be properly considered by the Board).

On the basis of the representations made by his Supervisors, the Claimant reported to Amarillo on October 2, 1995 and performed the two weeks of work on the Jackson Tamper at that location before returning to his regular assignment at Childress subsequent to October 13, 1995. Subsistence expense claims (supported by hotel receipts) and claims for round-trip mileage between Amarillo and Childress (with no documentary support) that he submitted were returned unpaid by Roadmaster Vaughn, who also removed 16.9 hours at time and one-half from the Claimant's time roll, refusing to compensate the Claimant for this alleged commuting time.

In deciding this claim, we neither reach nor decide such questions as whether payment of the Claimant's submitted claims for "full expenses" of subsistence and commutation was required under the express language of Rules 23 and 24 or whether employees and supervisors can enter into interpretations of such Rules and Agreements that would bind the Carrier and the Organization in future cases. Rather, we see this claim as presenting a unique case in which the doctrine of promissory estoppel requires that the Claimant's documented hotel expenses and factually unchallenged meal expenses during the claim period, for \$576.73, be reimbursed by the Carrier. However, we concur with the Carrier's determination that payment of his claims for travel time and mileage money for a constructive commute between Childress and Amarillo, which to all appearances never occurred, is not supported by logic, contractual intent or equity.

AWARD

Claim sustained in accordance with the Findings.

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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 28th day of August, 2001.