Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37551
Docket No. SG-38062
05-3-03-3-500

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Kansas City Southern Railroad

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern:

Claim on behalf of T. N. McBroom, for mileage accrued on his personal automobile traveling from one work point to another totaling $222.65, account Carrier violated the current Signalmen's Agreement, particularly Rule 58, when on August 29, 2002 and September 12, 2002, Carrier required the Claimant to use his personal vehicle to travel from one work point to another under directive from Carrier and then refused to properly compensate him for the miles traveled. Carrier's File No. K06035661. General Chairman's File No. 02-096-KCS-185. BRS File Case No. 12747-KCS."

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 fact situation in the two claims which are covered by the subject of this case is reasonably clear. The Claimant was assigned to a Traveling Signal Gang that was assigned to work ten hours per day, four days per week with Friday, Saturday and Sunday as assigned days off.

During the workweek of August 26 through August 29, 2002, the headquarters location of this Traveling Gang was Blue Springs, Missouri. On August 29, 2002, the Claimant was notified that following his assigned days off his headquarters location would be Mt. Pleasant, Texas. On August 30, 31 and September 1, 2002, the Claimant observed his assigned days off. On Monday, September 2, 2002, the Claimant reported to Mt. Pleasant, Texas, for his next assigned work period. The first part of this claim seeks reimbursement of 426 miles for allegedly using his personal vehicle to change his headquarters from Blue Springs to Mt. Pleasant.

During the workweek of September 9 through September 12, 2002, the Claimant's headquarters location was Plano, Texas.[1] At the completion of the work period on September 12, 2002, the Claimant was notified that effective September 16, 2002, his headquarters location would be Texarkana, Arkansas. On September 13, 14 and 15, 2002, the Claimant observed his assigned days off. On Monday, September 16, 2002, the Claimant reported to Texarkana, Arkansas, for his next assigned work period. The second part of this claim seeks reimbursement of 184 miles for allegedly using his personal vehicle to change his headquarters from Plano to Texarkana.

The Organization contends that the language of Rule 58 of the current Rules Agreement requires payment of mileage allowance as claimed herein. It argues that because the Claimant was notified of the change of headquarters during his tour of

[1] There is no evidence or other indication in this case record to show the circumstances under which Claimant's headquarters was changed from Mt. Pleasant, Texas, to Plano, Texas. Neither is there any claim in this case for a mileage allowance for such change.

duty on the last day of his work period he was required to use his personal vehicle to change his headquarters "during the workweek" and is therefore entitled to reimbursement for the mileage as claimed.

The Carrier argues that Rule 58(b) specifically provides that mileage payment under the circumstances which are present in this case is allowable only when the mileage to the new headquarters location exceeds the mileage to the former headquarters location. In this case, the Carrier insists that on both dates mentioned in the subject of the claim, the Claimant had to travel less miles to his new headquarters location than he had to travel to his former headquarters location.

Rule 58 - Traveling from One Work Point to Another reads as follows:

"RULE 58 - TRAVELING FROM ONE WORK POINT TO ANOTHER

(a) Time spent in traveling from one work point to another (during regular assigned hours, outside of regularly assigned hours or on a rest day or holiday) shall be paid for at the straight time rate.

(b) An employee who is not furnished means of transportation by the railroad company from one work point to another and who uses other forms of transportation for this purpose shall be reimbursed for the cost of such other transportation. If he uses his personal automobile for this purpose in the absence of transportation furnished by the railroad company he shall be reimbursed for such use of his automobile at the Carrier authorized automobile mileage allowance. If any employee's work point is changed during his absence from work point on a rest day or holiday this paragraph shall apply to any mileage he is required to travel to the new work point in excess of that required to return to the former work point."

The language of Rule 58 finds its origin in Section I.C. 1. and 2. of the Award of Arbitration Board No. 298 dated September 30, 1967. In fact, the language of Rule 58(a) and (b) is exactly the same as that found in the Award of Arbitration Board No. 298.

There is no evidence or proof found in this case record to indicate or suggest that the language as found in the Arbitration Award and/or Rule 58 has ever been applied as now contended by the Organization.

There is no evidence or proof found in this case record to show that the Claimant actually used his personal vehicle to drive from Blue Springs to Mt. Pleasant or from Plano to Texarkana during his assigned work period.

While there is no specific evidence or proof in this case record to show where the Claimant actually spent his assigned days off, there are incidental references found in the on-property case record to suggest that the Claimant did return to his home for the assigned days off. It is, therefore, reasonable and logical to conclude that the Claimant did, in fact, return to his home for his assigned days off.

There is no evidence or proof in the case record to indicate that the Claimant returned to Blue Springs or to Plano following his assigned days off.

However, there is evidence in the case record to show that on the first day of the work periods beginning September 2 and September 16, 2002, respectively, the Claimant did, in fact, report for service at Mt. Pleasant and Texarkana, respectively.

There is evidence in the case record to show that the Claimant was paid a travel allowance to compensate him for his normal commuting from his home to his assigned work location.

On the basis of what is not found in the case record when considered along with what is found in the case record, it is the Board's conclusion that the Organization failed to make a prima facie case to support its position.

It is the responsibility of the moving party to show by substantive, probative evidence that the Carrier's actions somehow violated the contract provisions. It is the Board's conclusion that the clear intent of the Rule language in this case is found not only in the long period of unchallenged application of the Rule as written but also in the practical and plain meaning of the Rule language which provides that reimbursement for the cost of transportation "shall apply to any mileage he is required to travel to the new work point in excess of that required to return to the former work point." In this case the mileage required to travel to the new work point was not in excess of that required to return to the former work point.

The Organization simply has not met its required burden of proof in this case.

Therefore, the claim as presented 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 20th day of July 2005.