

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39644
Docket No. MW-37859
09-3-NRAB-00003-030233
(03-3-233)**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(BNSF Railway Company (former St. Louis –
(San Francisco Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated after the Carrier stopped providing Traveling Maintenance Equipment Mechanic P. J. Langhans free transportation for weekend trips to his home and failed and refused to allow him the automobile mileage allowance for use of his private automobile in connection with weekend trips beginning March 14, 2000 and continuing [System File B-2084-3/12-00-0201 (MW) SLF].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant P. J. Langhans shall now be paid round trip mileage from St. Louis, Missouri to Lyons, Indiana and return for four hundred thirty (430) miles each week beginning March 14, 2000 and continuing.”**

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.

Claimant P. J. Langhans has been a Traveling Maintenance Equipment Mechanic (TMEM) since August 1989 during which time he has always resided in Lyons, Indiana. Until March 14, 2000, he was allowed to use a Carrier vehicle to drive home on weekends and return to his work site for the next workweek. On that date, the Claimant was informed that he would no longer be permitted to use a Carrier vehicle for transportation between his home and his headquarters and would have to use his private vehicle. He did so and then claimed mileage reimbursement for each round trip for each weekend, compensation that was denied.

The record in this case consists almost entirely of various letters the Claimant wrote to support his claim, Carrier responses, and further refutations by the Claimant of the Carrier's assertions. There was apparently no on-property conference. The Claimant asserted that as an employee who holds seniority stemming from his original employment in the former "Frisco" territory, he is covered under the 1951 Frisco Agreement. The language of Rule 32, the relevant portion of the 1951 Agreement, states as follows:

"Employees will be allowed, when in the judgment of the management conditions permit, to make weekend trips to their homes. Free transportation will be furnished consistent with the regulations. Any time lost on this account will not be paid for."

The Carrier referred to Rule 15 as the regulation governing free transportation on weekends and noted that Section (e) 3. (3) of that Rule provides that "transportation means travel by rail, bus or private . . ." nowhere requiring that the Carrier permit the use of a Carrier-owned vehicle. The Claimant finished the quotation of the Rule in his response: ". . . automobile and 'transportation cost' means the established passenger fare or automobile mileage allowance where automobile is used."

The Claimant asserted that he is the only member of the TMEM classification that is denied the use of a Carrier vehicle for weekend travel home although some other employees travel further than he does. This assertion was not challenged by the Carrier.

The Carrier asserts that “it is and has been a policy of the Roadway Equipment department that a traveling mechanic must live a reasonable distance from BNSF lines in order to be eligible to drive their Roadway equipment vehicle home over rest days so that they are prepared to efficiently respond to emergency calls. However, this is no guarantee that all Traveling Mechanics will be allowed to do so. Such decisions are and have been made on a case by case basis.” The Carrier asserts that all the other TMEMs live in towns on or near the railroad with one exception, an employee who has been grandfathered as the result of the sale of a line to another carrier. The Carrier asserts that, unlike the Claimant, the grandfathered TMEM is still able to answer emergency situations in a reasonable time if needed. The Carrier did not respond to the Claimant’s statement that he was currently working weekend callouts when needed – he gave his recent callout to a derailment in St. Louis, Missouri, as an example.

The Board held in prior cases that assertions of fact by one party not refuted by the other are accepted as fact. See Third Division Awards 20083 and 38206. We, therefore, find on this record the following facts: the Claimant is the only TMEM who is not compensated for his travel expenses either by the use of a Carrier vehicle or mileage reimbursement; the Claimant works emergency call-outs when needed and uses his own vehicle to report to the designated site; the Claimant held positions with both mobile and fixed headquarters in the more than ten years during which he used a Carrier vehicle for transportation between home and his reporting site.

The Board has also upheld the universally-accepted principle that Referees must read contract language as it was written and may not add or subtract from language agreed to by the parties. See Third Division Awards 1248, 10203, 13491, 18088, and 18423. This precept applies to the case before us in several areas.

First, the Carrier asserts that Rule 32 of the 1951 Agreement refers only to mobile employees and that the Claimant was awarded a headquartered position by a bulletin dated March 1, 2000. The only language provided by the parties regarding

the Agreement and the Rule at issue nowhere states that there is a distinction between TMEMs who hold mobile positions and those who do not.

Moreover, Rule 32 as cited does not contain any residence restrictions on employees' eligibility for travel cost reimbursement. A Carrier practice, unilaterally constructed, cannot serve to alter the parties' clear and unambiguous language. If the Carrier wishes to provide vehicles and/or mileage reimbursement only to those employees who live within a certain distance of a rail line, it must duly negotiate such language. Until that time, all employees covered by the pertinent Agreement are eligible for its benefits unless such employees are specifically excluded. Changed circumstances cited by the Carrier, such as a vastly different current transportation system than that which existed in 1951, do not serve to override clear language. For the Board to allow such alterations would be to insert a provision into the Agreement that does not exist.

The record establishes that the Claimant is covered by Rule 32. That Rule gives the Carrier discretion regarding whether an employee may make weekend trips home. Once such a trip has been permitted, the Carrier must abide by the Agreement. This language does not obligate the Carrier to provide the Claimant with a vehicle, but does require it to compensate him for such travel "consistent with the regulations," i.e., to provide reimbursement for mileage for weekend trips home. The Carrier shall reimburse the Claimant for 430 miles at the appropriate rate for every weekend trip he made commencing in mid-March 2000 until such time as either his headquarters or his place of residence changed. If either of those circumstances changed, he shall thereafter be provided with a vehicle or appropriate mileage reimbursement in accordance with this ruling.

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 22nd day of April 2009.