

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39710
Docket No. MW-38789
09-3-NRAB-00003-050190
(05-3-190)**

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad 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 Ms. L. Coffman for the dates of February 5 and 18, 2004 and when it failed and refused to reimburse her for medical and mileage costs incurred in the required DOT certification renewal in connection with the required CDL license (System File MW-04-99/1397423 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Coffman shall now be compensated for sixteen (16) hours at her respective straight time rate of pay and be reimbursed in the amount of three hundred fifteen dollars and seventy-four cents (\$315.74) for the incurred medical expenses and for twenty-six dollars and twenty-eight cents (\$26.28) for the incurred mileage expense.”**

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 various classes within the Track Sub Department, including Track Foreman. Prior to the events which gave rise to this claim, she had been certified by the Department of Transportation (DOT) to drive vehicles with a gross vehicle weight greater than 10,000 pounds (CDL license). The DOT requires periodic physical examinations as a condition of maintaining such certification. By letter dated May 22, 2003, the Carrier notified the Claimant that she was to contact the Carrier's medical provider to obtain an examination by July 20, 2003. On July 30, 2003, the medical provider notified the Claimant that it had been noted, during her examination, that certain findings did not meet established criteria, as it appeared she might have sleep apnea. She was instructed to obtain an evaluation from her personal physician as to whether that was the case. On March 15, 2004, the Claimant's physician completed the results of the evaluation, attesting that the Claimant did not have sleep apnea.

Thereafter, the Organization filed the instant claim. It asserts that the Carrier paid the costs of the initial exam, and the Claimant made repeated attempts to obtain the follow-up, with no assistance from the Carrier. The Organization seeks to have the Carrier reimburse the Claimant for her actual costs, including unpaid medical bills of \$315.74, 16 hours of straight time pay for the time spent obtaining the follow-up exam, and \$26.38 in mileage expenses.

The Organization asserts that the clear terms of Rule 8(e) of the parties' Agreement require a sustaining award. The Rule states:

"An employee assigned to operate a truck as provided in this Rule must be competent to service, care, and maintain the vehicle and its

appurtenances and perform other incidental work. The employee must be capable of passing required examinations and meet state and federal requirements. Carrier will reimburse the employee for any renewal costs for any required operator licenses and will reimburse any incidental costs associated with the operation of the vehicle.”

The Organization contends that the medical costs incurred by the Claimant were directly related to her obtaining the necessary physical examinations for her license renewal and should have been paid by the Carrier.

The Carrier asserts that Rule 8 has never been interpreted to require the Carrier to cover medical costs associated with DOT requirements. Rule 8, it asserts, covers the cost of renewing CDL licenses and nothing else.

Our review of the record persuades us that, contrary to the Organization’s contention, there is nothing in the plain language of Rule 8(e) that indicates the Carrier is required to pay the costs associated with a follow-up medical examination to determine whether an employee has a medical condition which might make it dangerous to operate a vehicle. In particular, there is no language in the Rule which speaks specifically to the Carrier’s obligation, if any, to cover the costs of medical examinations or to reimburse an employee for time and mileage expended in connection therewith.

Neither party provided any evidence of the practice on the property with respect to reimbursement of costs like those at issue here. In particular, the Organization presented no evidence to rebut the Carrier’s assertion that the Rule covers only license renewal fees. As the moving party, the Organization bears the burden of providing probative evidence to support its interpretation of the Agreement language. The Organization failed to prove that the costs at issue herein fall within the Carrier’s obligations under Rule 8(e).

Form 1
Page 4

Award No. 39710
Docket No. MW-38789
09-3-NRAB-00003-050190
(05-3-190)

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 26th day of May 2009.