

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39886
Docket No. MW-38915
09-3-NRAB-00003-050355
(05-3-355)**

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

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Soo Line 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 pay Extra Gang Foreman D. Keller a travel allowance for the round trip he made from Buffalo, Minnesota to Velva, North Dakota on July 3, 2003 and returning to Minot, North Dakota on July 7, 2003 as provided in Memorandum No. 9 (System File C-03-120-056/8-00319-388).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. D. Keller shall be allowed a travel allowance of one hundred dollars (\$100.00).”**

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 Organization filed the instant claim on the Claimant's behalf, alleging that the Carrier violated the parties' Agreement when it failed to pay the Claimant a travel allowance in connection with a round trip that he made during the July 4, 2003 holiday weekend.

The Organization initially contends that a plain, ordinary reading of Memorandum No. 9, and the undisputed fact that the Claimant traveled between 401 and 500 miles from work to home to work on the July 4, 2003 holiday, leaves no alternative but to sustain the claim in full. The Organization asserts that Memorandum No. 9 stipulates that the Carrier will pay each employee a minimum stipulated travel allowance for all miles actually traveled by the most direct highway route for each weekend round trip between the work location and the employee's home. The Organization argues that on the July 4 weekend in question, the Claimant traveled from his work site in Minnesota to his home in North Dakota, and then to his new work location in North Dakota. The Claimant therefore was entitled to receive a \$100.00 travel allowance.

Addressing the Carrier's assertion that the Claimant's allowance request was untimely, the Organization maintains that this is a red herring. It emphasizes that Memorandum No. 9 contains no terms that reasonably may be construed as placing time constraints upon employees claiming the weekend travel allowance. All that Memorandum No. 9 requires is that the employee travel by the most direct highway route between his work site and residence, which the Claimant did.

As for any allegation that the Claimant incorrectly filed for mileage expenses under Rule 35(c)(2) the Organization points out that the mileage claim was dropped and the weekend travel allowance correctly claimed.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The Carrier initially contends that the instant claim must be dismissed for lack of jurisdiction. The Carrier asserts that the instant claim has not been handled in the usual manner, up to and including the Carrier's highest officer designated to

handle such disputes, as required by the Railway Labor Act. The Carrier argues that the manner in which all claims are required to be handled is clearly set forth in Rule 21 of the Agreement.

The Carrier submits that under Rule 21, a valid claim must be presented within 60 days of the occurrence on which it is based, but the instant claim was not presented within 60 days of the occurrence. The Carrier points out that the instant claim was submitted on October 30, 2003, and it is based on an August 25, 2003, occurrence, the denial of his original expense claim. The Carrier argues that even if the Board considers the ES-Audit letter of September 15, 2003, which advised the Claimant to file a time claim, this letter did not extend the time limits under the Agreement. The Carrier insists that the claim was required to be filed by October 25, 2003, but it was not. The Carrier argues that because the letter submitted on behalf of the Claimant was not filed within the required 60 days, it is not valid. The Organization failed to meet its burden of proof.

The Carrier emphasizes that numerous Awards have held that for the Board to assume jurisdiction of a dispute, the dispute must have been handled in the usual manner on the property, in accordance with Rule 21. Because the instant claim was not presented in writing within 60 days of the occurrence giving rise to this dispute, the instant claim should be dismissed as untimely.

The Board thoroughly reviewed the record and finds that the Claimant was entitled to his weekend travel allowance of \$100.00 for the July 4 weekend in 2003. The Carrier apparently does not dispute that. The only problem here is that the Carrier alleges that the Claimant filed his claim late, and after the 60-day period required by the parties' Agreement.

The record reveals that the Claimant initially filed his claim for expenses on July 31, 2003. The record contains a declination letter dated August 25, 2003, and then a subsequent letter from a supervisor dated September 15, 2003, instructing the Claimant to forward the attached expense account through his Organization. The Claimant then filed a new expense report, which he resubmitted some time in September of 2003 and it is stamped as received at that time. The Organization followed up on the Claimant's expense issue with a letter dated October 30, 2003. On December 5, 2003, the Carrier denied the claim for expenses and stated in that denial, "Claimant was given the opportunity to claim weekend travel allowance

when he initially submitted July, 2003 expense account, however he chose to submit reimbursement for excess miles required to travel to new work point under Rule 26/35 on July 3, 2003, move was closer to home.”

The Board finds that the Carrier is being overly technical here and that, in fact, the Claimant did file his request for reimbursement in a timely fashion. The Carrier’s flippant response in its March 30, 2004 letter that “. . . the Carrier is not obligated to advise an individual to resubmit an expense if the first attempt is not allowed” is simply not compelling.

The fact remains that the Claimant was entitled to his expense reimbursement; he filed the expense reimbursement in a timely fashion; he was asked to amend it, which he did; and the Carrier never paid it. The Board finds that the Claimant’s rights were violated when the Carrier failed to reimburse him for his expenses. Therefore, the claim will be sustained.

AWARD

Claim sustained.

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 31st day of July 2009.