

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40215
Docket No. MW-38181
09-3-NRAB-00003-040065
(04-3-65)**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it required Messrs. W. Aragon, R. Switzer, O. Nelson, F. Tena, Jr., J. Almaraz, B. Johnson and R. Feldman to attend a one-week Leadership Training Class from January 6 through 10, 2003 prior to the start up of Gang #RP-19 at New Iberia, Louisiana and then refused to compensate them for travel time and mileage from their respective home stations to the class and return trip travel time and mileage back to their respective home stations. [System File F-03-12/13-03-0003 (MW) BNR].**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier must compensate each Claimant at the applicable mileage rate of thirty-six (.36) cents per mile traveled and travel time computed at the rate of two (2) miles per minute, per mile traveled thusly; ‘ . . . W. J. Aragon, Welding Foreman, rate of pay (\$20.13) per hour, Albuquerque, New Mexico to New Iberia, Louisiana, round trip (2174 miles), mileage (\$782.64) travel time (72 hours). R. H. Switzer, Foreman, rate of pay (\$20.40) per hour, Amarillo, Texas to New Iberia, Louisiana, round trip (1636 miles), mileage (\$588.96) travel time (54 hours). O. L. Nelson, Assistant Foreman, rate of pay (19.03) per hour, Cameron, Texas, to New Iberia, Louisiana, round trip (760 miles), mileage (\$273.60), travel time (25.3 hours). F. Tena Jr. Assistant Foreman, rate of pay (\$19.03) per hour, Temple, Texas**

to New Iberia, Louisiana, round trip (820 miles), mileage (\$295.20), travel time (27.3 hours). J. J. Almaraz, Truck Driver, rate of pay (\$18.05) per hour, Caldwell, Texas to New Iberia, Louisiana, round trip (694 miles), mileage (\$249.84) travel time (23.1 hours). B. D. Johnson, Truck Driver rate of pay (\$18.05) per hour, Caldwell, Texas to New Iberia, Louisiana, round trip (694 miles), mileage (\$249.84), travel time (23.1 hours). R. K. Feldman, Grapple Truck Driver, rate of pay (\$19.00) per hour, Willow Springs, Missouri to New Iberia, Louisiana, round trip (2640 miles), mileage (\$950.40) travel time (88 hours)."

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 maintains that the Carrier violated the Agreement when it failed to properly pay the Claimants for travel time and mileage prior to the start up of a Region/System Gang. According to the Organization, the Region/System Gang was bulletined to begin on January 13, but the Claimants were scheduled to appear on January 6 for training. The Carrier contends that the Claimants received a weekend travel allowance and are not entitled to travel time or mileage because this was regularly the start up of the Region/System Gang.

The facts are undisputed. The Claimants were assigned to RP-19 and the bulletined location for start-up was New Iberia, Louisiana, with the gang scheduled to start on January 13, 2003. The Claimants attended Leadership Training Classes from January 5 to January 10, 2003. The Claimants were paid the weekend travel allowance and straight time for attending the classes.

The Organization maintains that the Claimants should have been paid for attending these classes under Rule 35(g). The Carrier counters that the Claimants were filling their assigned positions on RP-19 and Rule 35(g) does not apply. Rather, the Claimants were exercising seniority and Rule 35(f) prohibits payment of travel time for employees traveling as a result of an exercise of seniority. The Carrier continues that the Organization's citation to Public Law Board No. 4768 Awards 23, 31 and 67 are not controlling because those cases dealt with employees traveling to the Technical Training Center to enhance or develop their skills. The Claimants were not receiving this type of training. Rather, the Leadership Training Classes were part of the start-up of the new gang and were held the week prior to that start-up. The Carrier further argues that the employee statements, which assert they had received such payments in the past, are not persuasive because the past payments do not constitute a new rule and also because new, sophisticated computer programs might have uncovered the incorrect payments.

Rule 35(g) provides that employees filling relief assignments or performing extra or temporary service will be paid for travel and waiting time as follows; and then details the requirements and two minutes per mile rate. The employee pay printouts indicate that all, save one, of the Claimants were paid for 'FORMAL TRAINING' from January 6 through January 13, 2003.

Public Law Board No. 4768, Award 67 provides guidance in the following quotation:

"This Board's Award 23 concerned pay for travel time to and from a training program. Travel by private automobile was not an issue therein. Award 23 found that the Claimant was traveling 'by the direction of the Company' and that Rule 35A, was applicable. The Carrier, as noted above, does not dispute that the 18 Claimants should receive travel time pay under Rule 35A (as determined in Award 23). The Carrier, however, resists that the concept that Rule 35G is applicable, pointing for support to Award 23.

In Award 31, however, the Board considered another instance of claim for travel time. The claim therein was sustained, based on 'conclusions reached in Award 23.' Contrary to the assertion of the Carrier here, the Organization's submission in Award 31 specifically referred to the use of a private automobile, the distance traveled, the claim amount at

the rate of two minutes per mile, and citation to Rule 35G. Award 31 sustained the full amount of pay claimed, thus indicating that all of Rule 35 was applicable.

In sum, the Board concludes that Awards 23 and 31 determined that travel pay was available to employees involved in traveling to and from Company-directed training programs. This is equally applicable here without distinction as to whether it is Rule 35A or Rule 35G which is appropriate for calculating the amount.”

The Board carefully reviewed the evidence. There is no compelling reason to depart from the logic and reasoning of the above-cited language of Public Law Board No. 4768, Award 67 and the Awards cited therein. The Claimants were participating in a Company training program held one week prior to the bulletined start-up of the gang. They used private automobiles to arrive. The Claimants’ time entries were for “FORMAL TRAINING.”

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 21st day of December 2009.