

****CORRECTED****

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40344
Docket No. MW-40490
10-3-NRAB-00003-080321**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 Carrier violated the Agreement when it failed and refused to allow Cross System Production Crew 2 employee H. Greenwell the proper travel time and mileage reimbursement for all miles and time incurred in using his personal vehicle for transportation between his designated lodging point and designated assembling work points on September 12, 13 and 14, 2005 (System File C-05-380-048/8-00319-401).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant H. Greenwell ‘. . . shall now be reimbursed for the 180 miles at the applicable 40-1/2 cents per mile and 3-1/2 hours of travel time at the pro rate of pay and have all overtime, vacation, fringe benefits, and other rights restored which were lost to him as a result of the above violation.”**

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.

This dispute is substantively similar to the one dealt with by the Board in Third Division Award 40343 wherein we interpreted Rule 22(3) Beginning and End of Day, to mean that once it is established that the distance between the nearest suitable available lodging and work site exceeds 30 miles (which is a condition precedent to entitlement in this provision) then travel time and mileage is allowed for the entire distance between the lodging and the work site, and not just the distance in excess of 30 miles each way, as contended by the Carrier. We adopt the rationale set forth in Award 40343 as applicable to the instant case.

The Claimant was an Extra Gang Assistant Foreman assigned to Cross System Road Crew No. 2 in September 2005 working in North Dakota. On the claim dates, the Claimant lodged at the corporate lodging facility in Wahpeton, North Dakota, which the Organization asserted was designated as the nearest suitable lodging available to the assembling point in McLeod, North Dakota, which it stated is 42 highway miles from the lodging facility. The Claimant filled out his expense report for September 2005 including mileage and travel time for each of the claim dates calculated from the corporate lodging facility as 84 miles each day. The Carrier issued a declination letter for his claim disallowing 60 miles for each day noting "Not entitled to personal vehicle miles per supervisor." The instant claim seeks reimbursement for the amounts deducted under Rule 22(3).

The positions of the parties are similar to those set forth in Third Division Award 40343. In its initial denial letter, the Carrier stated that there was no evidence presented of the Claimant actually driving. The Organization responded that the Claimant submitted his expense sheets indicating where he stayed and where the work site was located, and questioned why he was paid at all if the Carrier did not think that he traveled to the work site. In its subsequent denial, the Carrier made a statement that some employees rode with other employees, and asserted that the Organization did not show who drove and who did not. The

Organization noted that the Claimant had to reside at the corporate lodging facility to comply with the Carrier's lodging policy, and that there was never a challenge to the mileage calculation upon which the claim was based, pointing out that the Claimant was paid for all but 60 miles each day under the Carrier's misapplication of Rule 22(3). The Carrier took issue with the contention that the Claimant was obligated to use its corporate lodging facility when other motels were closer to the work site.

As noted in Third Division Award 40343, in order to be successful in a case alleging entitlement under Rule 22(3) it is incumbent on the Organization to show that the Claimants (1) were working under the provisions of Rule 35 (2) were not furnished outfit cars or trailers in which to reside and (3) that the nearest suitable, available lodging to the assembling point is in excess of 30 miles. Rule 22(3) does not require that the Organization establish that the Claimants actually stayed in the nearest suitable lodging or that they traveled to and from the work site in their personal vehicles, although the expense report submitted by the Claimant for reimbursement has the mileage and amount columns under the heading "Personal Vehicles." Because there does not appear to be a dispute that Wahpeton was the closest location to the work site with suitable available lodging, and that there was a corporate lodging facility in Wahpeton which, if used, would reduce lodging costs for Carrier, once the Organization claimed that corporate policy designated such lodging as the one to be used by the Claimants in the area and that it was located 42 miles from the work site, it was incumbent upon the Carrier to prove, rather than merely assert, that its corporate policy did not require employees to use that facility where it was provided in the area closest to the work site, and that specific motels in the same town were suitable and available and over 12 miles closer to the work site for purposes of calculating entitlements under Rule 22(3). While the Organization bears the burden of proving a violation of Rule 22 in this case, the Carrier cannot contest every fact asserted (which it has the records to verify or dispute) without providing some proof of the validity of its assertions. Further, as was the case in Third Division Award 40343, the declination letter and adjustment of the expense claim submitted do not support the Carrier's position. The records reveal that the Carrier did not deny entitlement to any monies at all based upon the assertion that the lodging facility was less than 30 miles from the work site or that the Claimant did not drive his personal vehicle. Rather, it reduced the amount paid by 60 miles each day based upon its interpretation of Rule 22(3).

Under all of these circumstances, we conclude that the Organization met its burden of proving that the prerequisites for entitlement to travel time and mileage contained in Rule 22(3) were met with respect to the Claimant on the claim dates. The Carrier has not shown in this case that the claim is excessive. However, it appears that the Claimant was compensated for 3.5 hours of overtime which, if it is attributable to travel time, must be deducted from his entitlement hereunder. If the Carrier has evidence that the Claimant submitted a reimbursement claim for mileage and expenses not actually incurred, it has other recourse under the Agreement.

AWARD

Claim sustained in accordance with the Findings.

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 1st day of March 2010.