Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 42099
Docket No. MW-42455
15-3-NRAB-00003-140071

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

(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed to properly compensate Messrs. S. O'Brennan, L. Pilachowski and M. Worhach for travel time in connection with attending the Boutét/Thermite welding training course at Perryville, Maryland beginning on October 8, 2012 through October 19, 2012 (System File NEC-BMWE-SD-5147 AMT).

(2) The Agreement was violated when the Carrier failed to properly compensate J. Anderson for travel time in connection with attending the Boutét/ Thermite welding training course at Perryville, Maryland beginning on October 8, 2012 through October 19, 2012 (System File NEC-BMWE-SD-5145).

(3) The Agreement was violated when the Carrier failed to properly compensate B. Zissimos for travel time in connection with attending the Boutét/ Thermite welding foreman training course at Perryville, Maryland beginning on October 8, 2012 through October 19, 2012 (System File NEC-BMWE-SD-5146).

(4) As a consequence of the violation referred to in Part (1) above, 'The Organization will require the claimants compensated for any loss of travel time as a result of this violation. Further, the Organization will require that the Carrier immediately cease its practice of denying employees travel time of the type required by the August 26, 1977 Training Agreement.'

(5) As a consequence of the violation referred to in Part (2) above, 'The Organization will require Claimant compensated for any loss of travel time as a result of this violation, and that Claimant immediately be properly compensated for his travel to and from this Boutét/Thermite training.'

(6) As a consequence of the violation referred to in Part (3) above, 'The Organization will require Claimant compensated for any loss of travel time as a result of this violation, and that Claimant immediately be properly compensated for his travel to and from this Boutét/Thermite training.'"

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.

On October 18 and 20, 2012, the Organization filed separate claims asserting that the Carrier had violated Section 5(d) of the Maintenance of Way Employees Training Agreement (hereinafter referred to as the Training Agreement), dated August 26, 1977, and updated through June 27, 1992, when it failed to pay travel time to five separate Claimants as a result of their being awarded Welder training assignments at the "MW Base" in Perryville, Maryland, during the period of October 8 through October 19, 2012. In separate letters dated December 3 and 10, 2012, the Carrier denied the claims asserting, among other things, that Rule 4(c) governs the issue presented because the Claimants were awarded a temporary training assignment in another headquarters and they were not entitled to travel time compensation, because no other employee covered by Rule 4 is paid to travel to their headquarters. Further, the Carrier cites Rule 63(e) as specifically prohibiting the payment of travel time to

employees, who like the Claimants here, have exercised their seniority and are traveling from their home to "designated assembly points."

The claim was handled on the property in the usual and customary manner including placement before the highest officer of the Carrier designated to handle such matters. Following a conference discussion on April 13, 2013 and denial of the claim by the Carrier, the Organization filed a timely Notice of Intent with the Third Division. Based on the identical nature of the alleged violations and applicable Rules the Organization combined the claims. They are addressed concurrently as one claim, which is now properly before the Board for adjudication.

The Organization argues in the strongest of terms that the Carrier violated the clear and unambiguous language of Section 5(d) of the Training Agreement wherein it provides that employees will be paid travel time when attending training courses. It cites numerous Awards wherein a basic tenet of contract interpretation requires that clear and unambiguous language must govern and its plain meaning must be applied. Travel pay is required, claims the Organization, because the Claimants traveled from their homes to the training location without being provided with transportation or other travel time compensation for each day of training. The Organization asserts that a reading of the Training Agreement clearly entitles the Claimants to travel time compensation.

The Organization contends that because the Training Agreement contains clear and unambiguous language that applies to the dispute, any evidence of a past practice must be rejected. It provides ample precedent to support its assertion that only where an ambiguity exists as to the meaning of a provision can a binding past practice be applied. The Organization argues that neither an ambiguity nor evidence of a past practice exists to support the Carrier's contentions that travel time is not paid to employees temporarily assigned to another headquarters.

The Organization maintains that the Carrier's reliance on Rule 4(c) and Rule 63(e) is misguided because the Training Agreement governs the training positions. The Organization contends that because the positions filled by the Claimants are for training purposes, neither Rule 4 nor Rule 63 cited by the Carrier in its defense apply to the claim presented.

Conversely, the Carrier contends that the Organization failed to satisfy its burden to prove the essential elements of its claim. Specifically, the Carrier asserts that

the Claimants were awarded the advertised and bulletined training positions, which included a temporary headquarters, starting time, tour of day, and rate of pay as required by Rule 4(c), which is cited in Section 5(d) of the Training Agreement. The Carrier contends that employees do not receive travel time for reporting to their headquarters and that the travel time provision in Section 5(d) only applies to training at a facility that is not part of the Carrier's operation.

The relevant contract language applicable to the dispute, in pertinent part, is as follows:

> **"Maintenance of Way Employees Training Agreement, Section 5(d)**
>
> **(d) When employees are attending training courses, it will be understood that the employees have accepted a position in accordance with Rule 4, paragraph (c) of the current Amtrak agreement. Employees will be paid travel time on the basis of two minutes per mile from home to the classroom, and return, each day unless the Carrier provides transportation and travel time.**
>
> **Rule 4 – Temporary Positions and Vacancies – Method of Filling**
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> **(a) A position or vacancy may be filled temporarily pending assignment. When the new positions or vacancies occur the senior available employees will be given the preference, whether working in a lower rated position or in the same grade or class pending advertisement and award.**
>
> **(c) Employees temporarily assigned in accordance with the foregoing will be governed by the starting time, headquarters, tour of duty and rate of pay of the position so filled.**
>
> **The provisions of this paragraph (c) apply only when positions are filled by AMTRAK in accordance with paragraph (1) of this Rule 4, and when an employee in the exercise of seniority displaces a junior employee.**

Rule 63 – Waiting or Traveling by Direction of Management

An employee waiting, or traveling by direction of AMTRAK by passenger train, motor car, or any other method of transportation, will be allowed straight time for actual time waiting and/or traveling during or outside of the regularly assigned hours except:

*** * ***

(e) An employee will not be allowed time while traveling in the exercise of seniority or between his home and designated assembling points, or for other personal reasons."

The Board finds that the Organization failed to meet its burden to prove that the Training Agreement provides for travel pay for the Claimants. The ambiguity created by Section 5(d) and its reference to Rule 4(c) of the basic Agreement fails to express the Parties' intent with clarity as written. The Board concludes that there was no "meeting of the minds" that the travel time provided for in Section 5(d) of the Training Agreement also applied to employees temporarily assigned and "governed" by the terms of Rule 4(c) of the Agreement.

In addition, it is unclear whether Section 5(d) of the Training Agreement was intended to supersede Rule 63(e), which prohibits payment of travel for employees exercising seniority. The record here indicates that the Claimants selected the training assignments based on their respective seniority. However, there is no indication in the Rule that "designated assembly points" excludes training courses covered by the Training Agreement. The conflict between the two provisions as applied to the Claimants creates further uncertainty as to the applicability of the travel time compensation requested. The plausible contentions made by both Parties further illustrate an ambiguity and the lack of a plain meaning of the terms in dispute.

A reading of Section 5(d) can lead to the conclusion that the specific conditions listed in Rule 4(c), which does not include travel time, applies to employees attending training courses. On the other hand, another reading of Section 5(d) can lead to the conclusion that all employees in classroom training are entitled to travel time. As mentioned above, the application of Rule 63(e) to the dispute is also unclear. While the Board recognizes that paragraph 8 of the Training Agreement indicates that it is a

separate Agreement, it does not abrogate any of the terms and conditions of the basic Agreement unless expressly stated.

Without a clear and plain meaning of the applicable provisions of the two Agreements and a lack of an established and binding past practice, the claim must be denied. Evidence of a past practice can be applied to determine the proper application of ambiguous contract language. A binding past practice is one where there is a mutual understanding and application of a long-standing custom between the parties that governs with the effect of an otherwise written agreement. Here, however, no such practice in support of either argument has been established.

Based on the foregoing, the Board finds that the record lacks the requisite substantial evidence that the Carrier violated the Training Agreement.

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 13th day of July 2015.