

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42970
Docket No. MW-42716
18-3-NRAB-00003-140317**

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

**(Brotherhood of Maintenance of Way Employees 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. J. Goff, H. Jones, A. Stangland, P. Anderson, D. Reynolds, L. Cote, J. Blufloft, D. Cox, V. Gutierrez, J. Mitchell and E. Bartle to attend Leadership Training and perform equipment preparation and related work beginning January 2, 2013 prior to the scheduled start up of Gang TP-12 on January 7, 2013 at West Plains, Missouri and then refused to compensate them for travel time and mileage from their respective home stations to West Plains, Missouri and return trip travel time and mileage back to their respective home stations (System File C-13-T075-5/10-13-0308 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants shall ‘... be paid mileage at two (2) minutes a mile at 56.5 cents and straight time hours at their rates of pay for their travel time as a settlement of this claim. John Goff 750 miles 6hours (sic) travel time, Andy Stangland 1720 miles 13 hours travel time, Pat Anderson 1760 miles 13.5 hours travel time, Harold Jones 952 miles 8 hours travel time, Dennis Reynolds 920 miles 10 hours travel time, Leland Cote 996 miles 7.5 hours travel time, Jodi Blufloft 1720 miles 13 hours travel time, Dan Cox 2182 miles 16.5 hours travel time, Val Gutierrez 1706 miles 14hours (sic) travel time, Jack**

Mitchell 2232 miles 17hours (sic) travel time, Eric Bartle 1600 miles 12 hours travel time.’”

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 instant claim concerns the proper contractual travel payments due for those required to report prior to the scheduled start-up of a gang. The Claimants in this matter were required to report on January 2, 2013, prior to the scheduled start-up of Regional System Gang TP-12 on January 7, 2013. It is undisputed that the Claimants drove their personal vehicles from their homes to West Plains, Missouri, to report on January 2, 2013. The Claimants were paid travel allowance of one-way gang start-up for mileage, pursuant to Rule 38, Section II.

The Organization contends that this payment was inadequate, and that the Claimants should have been paid mileage at the applicable rate, pursuant to Rule 35B, and travel time at the rate of 2 minutes per mile, pursuant to Rule 35G, for round-trip travel from their home stations to West Plains, Missouri. The Carrier contends that Rule 35 is not applicable because the duties performed by the Claimants prior to the regular start-up of the gang were not “extra or temporary service,” such that they would be entitled to travel time, pursuant to Rule 35G, and that the Claimants were not traveling from “one work point to another,” such that they would be entitled to mileage, pursuant to Rule 35B.

Rule 35 reads in relevant part:

RULE 35. TRAVEL TIME

“A. Employees not in camp cars and other than those covered by Section G hereof will be allowed straight time for actual time waiting or traveling as passengers by passenger train or other public conveyance by the direction of the Company, during or outside of regular work period including travel on rest days or holidays, either on or off an assigned territory.

...

B. An employee who is not furnished means of transportation by the Company from one work point to another and who uses other forms of transportation for this purpose shall be reimbursed for the cost of such transportation. If he uses his personal automobile for this purpose in the absence of transportation furnished by the Company, he shall be reimbursed for such use of his automobile on a mileage basis consistent with Company policy but not less than fifteen (15) cents a mile for the mileage from one work point to another.

...

G. (1) Employees filling relief assignments or performing extra or temporary service will be paid for travel and waiting time as follows:

(2) If the time consumed in actual travel, including waiting time enroute, from the headquarters point to the work location, together with necessary time spent waiting for the employee's shift to start, exceeds one (1) hour, or if on completion of his shift necessary time spent waiting for transportation plus the time of travel, including waiting time enroute, necessary to return to his headquarters point or to the next work location exceeds one (1) hours, then the excess over one (1) hour in each case shall be paid for as working time at the straight time rate of the job to which traveled. When employees are traveling by private automobile time shall be computed at the rate of two (2) minutes per mile traveled.”

An issue central to the resolution of the instant claim is whether the duties performed by the Claimants prior to the regular start-up of the gang were “extra or temporary service,” which would entitle the Claimants to travel time provided in Rule 35G. The Organization submits that the Claimants were required to report early for leadership training, equipment preparation, and other related work prior to the start of Gang TP-12, and that such work was “extra or temporary service.” As the moving party, it is the Organization that bears the initial burden of establishing material facts supporting a violation of the Agreement. See Third Division Award 40466.

In support of its position, the Organization relies on several arbitration awards, including Award 67 of the PLB No. 4768, Third Division Award 32295, and Third Division Award 40215. In Award 67 of the PLB No. 4768, the claimants were assigned to attend a 10-day welding training class at the carrier’s training center, and were paid for actual time spent in travel, pursuant to Rule 35A. The Organization sought payment for the claimants at the rate of two minutes per mile, as provided in Rule 35G. The Board concluded that two prior awards addressing travel to attend training classes had “determined that travel pay was available to employees involved in traveling to and from company-directed training programs,” and it sustained the claim for travel time at two-minutes per mile for claimants who used their personal automobiles.

In Third Division Award 32295, the Claimants sought travel time at the rate of two minutes per mile for traveling with their personal automobiles from their residences to welding training classes at the carrier’s facility. Based on the language of a rule that reads the same as the last sentence of Rule 35G(2), the Board sustained the claim.

More recently, in Third Division Award 40215, claimants sought mileage and travel time under Rule 35G for participating in company leadership training classes held one week prior to the bulletined start-up of a gang. In that Award, the Board noted that the Claimants’ time entries were for “FORMAL TRAINING,” and it concluded that the Claimants “were participating in a Company training program held one week prior to the bulletined start-up of the gang.” Based on that finding and the reasoning of PLB No, 4768, Award 67 and two other awards cited therein, the Board sustained the Claimants’ claims for mileage at the applicable rate and travel time at the rate of two minutes per mile.

These prior awards lend support to the conclusion that carrier-directed training classes or programs should be treated as “extra or temporary service” under Rule 35G. On the other hand, there does not appear to be any precedent that treats other types of early start-up activities as “extra or temporary service.” Thus, to prevail on this claim, the Organization has the burden to establish that the Claimants were engaged in training classes or programs during the early start-up in question.

The Organization’s Claim states that the Claimants were brought in early “to help get the machines, trucks and other things ready before the rest of the gang showed up.” The Organization’s Appeal repeated similar language and added that Claimants also reported “for training,” and notes that the Claimants were called by the Carrier to report a week earlier than the scheduled bulletined start-up date “to attend ‘Leadership Training’ and to get machines, trucks, and other things ready before the rest of the gang reported for duty.” Beyond these allegations, the only evidence presented by the Organization was an email from a foreman on another gang the previous year stating that he reported early for leadership training and start-up and he received travel pay and mileage. This evidence is not relevant to the matter of whether Claimants attended leadership training or other formal training. In that regard, the record does not contain any statements from the Claimants, payroll records, training materials, or other evidence that could establish that the Claimants attended leadership or other training.

After a careful review of the entire record, the Board is unable to determine if the Claimants were engaged in leadership or other training during the early start-up in question. This factual issue is essential for the resolution of this case, and the Organization has not met its burden to establish the violation.

AWARD

Claim dismissed.

Form 1
Page 6

Award No. 42970
Docket No. MW-42716
18-3-NRAB-00003-140317

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 14th day of February 2018.