

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42971
Docket No. MW-42718
18-3-NRAB-00003-140390**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(
(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 Mr. D. Morgan to attend training and perform prep work at Pasco, Washington beginning on February 19, 2013 prior to the scheduled start up of Regional System Gang UC-0001, SC-50 and then refused to compensate him for travel time and mileage from his home station in Scottsbluff, Nebraska to Pasco, Washington and return trip travel time and mileage back to his home station (System File C-13-T075-8/10-13-0378 BNR).

(2) The Carrier violated the Agreement when it required Mr. R. Walsh to attend training and perform prep work at Pasco, Washington beginning on February 19, 2013 prior to the scheduled start up of Regional System Gang UC-0001, SC-50 and then refused to compensate him for travel time and mileage from his home station in Ranchester, Wyoming to Pasco, Washington and return trip travel time and mileage back to his home station (System File C-13-T075-10/10-13-0380).

(3) The Carrier violated the Agreement when it required Mr. C. Ropar to attend training and perform prep work at Pasco, Washington beginning on February 19, 2013 prior to the scheduled start up of Regional System Gang UC-0001, SC-50 and then refused to compensate him for travel time and mileage from his home station in Maple Valley, Washington to Pasco, Washington and return trip travel time and mileage back to his home station (System File C-13-T075-11/10-13-0381).

(4) The Carrier violated the Agreement when it required Mr. C. Johnson to attend training and perform prep work at Pasco, Washington beginning on February 19, 2013 prior to the scheduled start up of Regional System Gang UC-0001, SC-50 and then refused to compensate him for travel time and mileage from his home station in Boelus, Nebraska to Pasco, Washington and return trip travel time and mileage back to his home station (System File C-13-T075-12/10-13-0382).

(5) The Carrier violated the Agreement when it required Mr. T. Veal to attend training and perform prep work at Pasco, Washington beginning on February 19, 2013 prior to the scheduled start up of Regional System Gang UC-0001, SC-50 and then refused to compensate him for travel time and mileage from his home station in Bison, South Dakota to Pasco, Washington and return trip travel time and mileage back to his home station (System File C-13-T075-13/10-13-0383).

(6) The Carrier violated the Agreement when it required Mr. C. McCormick to attend training and perform prep work at Pasco, Washington beginning on February 19, 2013 prior to the scheduled start up of Regional System Gang UC-0001, SC-50 and then refused to compensate him for travel time and mileage from his home station in Scottsbluff, Nebraska to Pasco, Washington and return trip travel time and mileage back to his home station (System File C-13-T075-14/10-13-0384).

(7) The Carrier violated the Agreement when it required Ms. J. Hofmann to attend training and perform prep work at Pasco, Washington beginning on February 19, 2013 prior to the scheduled start up of Regional System Gang UC-0001, SC-50 and then refused to compensate her for travel time and mileage from her home station in Olive, Montana to Pasco, Washington and return trip travel time and mileage back to her home station (System File C-13-T075-15/10-13-0385).

(8) The Carrier violated the Agreement when it required Mr. D. Buffington to attend training and perform prep work at St. Joseph, Missouri beginning on February 19, 2013 prior to the scheduled start up of Gang TRPX-0004 and then refused to compensate him for travel time and mileage from his home station in Newcastle, Wyoming to St. Joseph,

Missouri and return trip travel time and mileage back to his home station (System File C-13-T075-16/10-13-0386).

(9) The Carrier violated the Agreement when it required Mr. J. Lesmeister to attend training and perform prep work at St. Joseph, Missouri beginning on February 19, 2013 prior to the scheduled start up of Gang TRPX-0004 and then refused to compensate him for travel time and mileage from his home station in Newcastle, Wyoming to St. Joseph, Missouri and return trip travel time and mileage back to his home station (System File C-13-T075-17/10-13-0387).

(10) As a consequence of the violation referred to in Part (1) above, Claimant D. Morgan shall ‘... be paid the proper mileage rate at that time and the 2 minutes per mile travel time for the round trip. I am requesting the Claimant be paid at his appropriate rate of pay. *’**

(11) As a consequence of the violation referred to in Part (2) above, Claimant R. Walsh shall ‘... be paid the proper mileage rate at that time and the 2 minutes per mile travel time for the round trip. I am requesting the Claimant be paid at his appropriate rate of pay. *’**

(12) As a consequence of the violation referred to in Part (3) above, Claimant C. Ropar shall ‘... be paid the proper mileage rate at that time and the 2 minutes per mile travel time for the round trip. I am requesting the Claimant be paid at his appropriate rate of pay. *’**

(13) As a consequence of the violation referred to in Part (4) above, Claimant C. Johnson shall ‘... be paid the proper mileage rate at that time and the 2 minutes per mile travel time for the round trip. I am requesting the Claimant be paid at his appropriate rate of pay. *’**

(14) As a consequence of the violation referred to in Part (5) above, Claimant T. Veal shall ‘... be paid the proper mileage rate at that time and the 2 minutes per mile travel time for the round trip. I am requesting the Claimant be paid at his appropriate rate of pay. *’**

(15) As a consequence of the violation referred to in Part (6) above, Claimant C. McCormick shall ‘... be paid the proper mileage rate at that

time and the 2 minutes per mile travel time for the round trip. I am requesting the Claimant be paid at his appropriate rate of pay. ***'

(16) As a consequence of the violation referred to in Part (7) above, Claimant J. Hofmann shall '... be paid the proper mileage rate at that time and the 2 minutes per mile travel time for the round trip. I am requesting the Claimant be paid at her appropriate rate of pay. ***'

(17) As a consequence of the violation referred to in Part (8) above, Claimant D. Buffington shall '... be paid the proper mileage rate at that time and the 2 minutes per mile travel time for the round trip. I am requesting the Claimant be paid at his appropriate rate of pay. ***'

(18) As a consequence of the violation referred to in Part (9) above, Claimant J. Lesmeister shall '... be paid the proper mileage rate at that time and the 2 minutes per mile travel time for the round trip. I am requesting the Claimant be paid at his appropriate rate of pay.'

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 bulletined start-up of a gang. Seven of the Claimants in this matter were required to report on February 19, 2013, prior to the scheduled start-up of Regional System Gang UC-0001, SC-50 on February 25, 2013. These Claimants drove their personal vehicles from their homes to Pasco, Washington, to report on February 19, 2013. The other two Claimants were required to report on February 19, 2013, prior to the scheduled start-up of Gang TRPX-0004

on February 25, 2013. These two Claimants drove their personal vehicles from their homes to St. Joseph, Missouri, to report on February 19, 2013. All of 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 their work location in either Pasco, Washington, or St. Joseph, 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, including reviewing qualifications of gang members, pre-job surveys, inspecting equipment, and ordering supplies, were not “extra or temporary service,” such that the Claimants would be entitled to travel time, pursuant to Rule 35G. In addition, the Carrier contends 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 as provided in Rule 35G. The Organization submits that the Claimants were required to report early for leadership training prior to the regularly scheduled start of the gangs, 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 PLB No. 4768, Third Division Award 32295, and Third Division Award 40215. In Award 67 of 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 the 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, the 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 such as reviewing qualifications of gang members, pre-job surveys, inspecting equipment, or ordering supplies as "extra or temporary service." Thus, to prevail in 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 Claim Letters filed by the Organization on behalf of the Claimants state that the Claimants were "told by the carrier to report a week early for this gang." The Organization's Appeals added that the Claimants were required to report early "for training and to do prep work." The Carrier responded with a general denial of the claim and stated that the Claimants were properly paid for gang start-up.

To support its claim, the Organization presented payroll records; an email from a foreman on another gang the previous year stating that he and others in his gang reported early for leadership training and start-up and they received travel pay and mileage; a statement signed by eight of the Claimants listing their home stations and the miles to Pasco, Washington; and statements from the two Claimants who reported from their home stations to St. Joseph, Missouri, detailing the mileage and travel time for those trips. Except for the payroll records, none of the evidence presented by either party is relevant to show whether the Claimants were involved in training during the early start-up period. The time entries on the payroll records during this period for the Claimants R. Walsh and C. Ropar stated "FORMAL TRAINING," and the time entries for all the other Claimants stated "REGULAR SCHEDULE."

As to the Claimants R. Walsh and C. Ropar, there was no evidence presented by the Carrier to rebut the time entries indicating that they were paid for formal training. The Carrier's evidence of the types of activities engaged in by other gangs during early

start-ups is not relevant to establish the activities of these Claimants in Regional System Gang UC-0001, SC-50 and Gang TRPX-0004. Even if the Carrier had a practice of bringing in employees early to simply get prepared for regular gang start-up, that evidence does not establish the activities performed by the Claimants here.

On the basis of the payroll records and the reasoning of the prior awards discussed above, the Board concludes that the Claimants R. Walsh and C. Ropar were involved in Carrier-directed training, and their claims are sustained. The Board is unable to determine if the other 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 for these Claimants.

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 14th day of February 2018.