

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42979
Docket No. 42937
18-3-NRAB-00003-150022**

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 Agreement was violated when the Carrier recouped compensation previously issued to Messrs. R. Mancias, C. Thomas, C. Gloria and W. Edwards in connection with their attending Leadership Training prior to the March 11, 2013 scheduled gang start-up date of Gang TUCX0008 (System File C-13-T075-19/10-13-0617 BNR).”**
- (2) As a consequence of the violation referred to in Part (1) above, ‘... any and all of the Claimants that have pay cut from their checks have it restored. If any of the claimants are scheduled for cuts that haven’t occurred I request that the cuts not be made.”**

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. The Claimants in this matter were required to report on March 4, 2013, prior to the scheduled start-up of Gang TUCX0008 on March 11, 2013. The Claimants drove their personal vehicles from their homes to Mount Pleasant, Iowa, to report on March 4, 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 two minutes per mile, pursuant to Rule 35G, for round-trip travel from their home stations to their work location in Mount Pleasant, Iowa. 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 Letter filed by the Organization on behalf of the Claimants states that the Claimants were “directed by the company to early report to gang TUCX0008 for Leadership Training prior to the actual startup of the gang.” The Carrier denied the claim and asserted that its time records did not support the Organization’s allegation.

To support its allegation, the Organization presented payroll records showing the Claimant's travel time and mileage, and a statement from the Claimant R. Mancias reporting that the Claimants were called in on March 4, 2013, for leadership training. This statement established a *prima facie* case that the Claimants were called in for leadership training.

The Carrier did not present any relevant evidence to rebut this statement. The Carrier presented several emails from various supervisors involved in early start-ups on other gangs noting that they have paid one-way start up for travel, but this evidence is not relevant to establish the activities of the Claimants in Gang TUCX0008. 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 evidence presented in this case and the reasoning of the prior awards discussed above, the Board concludes that Claimants were involved in Carrier-directed training, and their claims are sustained.

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 14th day of February 2018.