

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 42981
Docket No. MW-42996
18-3-NRAB-00003-140343

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

(Brotherhood of Maintenance of Way Employes 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. S. Monk, B. Rea, T. Schumm, A. Cockroft, S. Vogel, J. Gier, C. Gustafson, D. Burleigh and T. Hartline to attend Leadership Training at Everett, Washington beginning on February 25, 2013 prior to the scheduled start up of Regional System Construction Gang TCGX0001 (CG-01) and then refused to compensate them for travel time and mileage from their respective home stations to Everett, Washington and return trip travel time and mileage back to their respective home stations (System File C-13-T075-7/10-13-0334 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants shall each ‘... be paid their Travel Time computed at the rate of two (2) minutes per mile, as well as, their personal vehicle mileage at the rate of (\$.565) per mile for the travel that they incurred from their respective residences to Everett, Washington and then from Everett, Washington back to their respective residences, at their respective rates of pay, as settlement of this claim.”

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 February 25, 2013, prior to the scheduled start-up of Regional System Construction Gang CG-01 on March 4, 2013. The Claimants drove their personal vehicles from their homes to Everett, Washington, to report on February 25, 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 Everett, Washington. 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. Employes 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 employe 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) Employes 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 employe'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 employes 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 prior to the start of Gang CG-01, 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.

In this matter, the Organization’s Claim and its appeal state that the Claimants were brought in early for “Leadership Training.” The Carrier responded by denying the claim, and stating that its records did not support the Organization’s allegation and that the Claimants were compensated for gang start-up.

To support its claim, the Organization presented 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; a statement from one of the Claimants listing the “miles from home” he and the other the Claimants were from Everett, Washington; and the Job Bulletin for the CG-01 Gang. None of this evidence shows that the Claimants attended leadership or other Carrier-directed training during the early report period. In fact, payroll records in the record state that the Claimants’ time entries were for “REGULAR SCHEDULED,” indicating that they were performing regular duties.

After a careful review of the entire record, the Board determines that the Claimants were not engaged in leadership or other training during the early start-up in question.

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 14th day of February 2018.