

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43023  
Docket No. MW-42381  
18-3-NRAB-00003-130390**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference  
(  
(Union Pacific Railroad Company former Missouri Pacific  
(Railroad Company

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to allow payment for time traveled and expenses incurred by Mr. R. Spradling on June 11, 2012 in connection with getting fingerprinted and renewing his CDL license (System File UP718BT12/1575521 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Spradling shall now be compensated “\*\*\* for four hundred two (402) miles at the IRS rate of fifty-five and one half (55.5) cents per mile (\$223.11) and the rate of sixty (60) miles per hour for a total of six and seven tenths (6.7) hours of overtime at a rate of one and one half (1 1/2) times per hour.”

**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 Claimant was working as a Truck Operator with Tie Gang South 9154 at the time of this dispute, and some of the vehicles he operated required a Commercial Driver's License (CDL). There is no dispute that on Monday, June 11, 2012, a rest day for the Claimant, he drove to Springfield, MO from his residence to get the required fingerprinting for a HazMat endorsement to his DOT certification, or that he drove 402 miles and it took him 6.5 hours to complete the task. There is no evidence that a HazMat endorsement was required for the performance of his job. This claim seeks reimbursement for the costs associated with the Claimant obtaining the fingerprinting, including time and mileage.

The Organization argues that it has been the practice of the Carrier to pay for time and mileage in obtaining a CDL, as well as the medical and other necessary requirements to obtain or renew such license. It presented notes from the Claimant and two other employees indicated that they had been reimbursed by Carrier for such expenses. The Organization relies on the language of the last sentence Rule 8(d), which includes Carrier reimbursement for "any renewal costs for any required operator licenses and ... any incidental costs associated with the operation of the vehicle." It also contends that the decision in Third Division Award 39710, relied upon by the Carrier, is palpably erroneous with respect to the interpretation of that provision, and relies on the fact that, in that award, no evidence of past practice was presented, as it was in this case.

The Carrier asserts that the Agreement has no language to support reimbursement of trip and travel expenses, and Rule 8(d) only obligates it to reimburse for license renewal fees. It relies on Third Division Award 39710, as having interpreted this provision on the property, and the principle of *stare decisis* as to its binding effect, citing Third Division Awards 28618 and 27810. The Carrier contends that such decision is not clearly erroneous, and properly interprets the clear language of Rule 8(d). The Carrier points out that the Claimant sought the HazMat endorsement on his own, it was not required by the Carrier, and the location of the facility he had to travel to in order to obtain the fingerprinting was

dictated by the Federal Motor Carrier Safety Administration (FMCSA), not the Carrier.

Additionally, the Carrier argues that the Organization failed to prove a past practice of paying for the time and travel expenses it seeks, submitting only three statement that employees previously received such, but no specific information or documentation to establish the truth of that allegation. It notes that, on the other hand, it submitted five (5) statements supporting the Carrier's consistent practice of never paying for time and travel to obtain, or renew, a CDL, and that such documentation covers a lengthy period of time including evidence from General Managers of Labor Relations responsible for dealing with such claims and interpretation of the Agreement. The Carrier maintains that, at best, the record contains an irreconcilable dispute of fact, prohibiting the Organization from sustaining its burden of proving a violation in this case, relying on Third Division Awards 26478, 37204, 33895, 36977.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proof in this case. This issue raised in this case deals with the interpretation of the language of Rule 8(d), which provides, in pertinent part:

"An employee assigned to operate a truck as provided in this Rule must be competent to service, care, and maintain the vehicle and its appurtenances and perform other incidental work. The employee must be capable of passing required examinations and meet state and federal requirements. Carrier will reimburse the employee for any renewal costs for any required operator licenses and will reimburse any incidental costs associated with the operation of the vehicle."

The Carrier is correct in asserting that there exists an on property interpretation by the Board of this exact provision between the parties in Third Division Award 39710. Although that case involved the submission of expenses concerning a follow-up medical examination for the renewal of DOT certification, rather than fingerprinting for a HazMat endorsement, the Board considered the same issue presented, and found as follows:

**“..... In particular, there is no language in the Rule which speaks specifically to the Carrier’s obligation, if any, to cover costs of medical examinations or to reimburse an employee for time and mileage expended in connection therewith.**

**Neither party provided any evidence of the practice on the property with respect to reimbursement of costs like those at issue here. In particular, the Organization presented no evidence to rebut the Carrier’s assertion that the Rule covers only license renewal fees. As the moving party, the Organization bears the burden of providing probative evidence to support its interpretation of the Agreement language. The Organization failed to prove that the costs at issue herein fall within the Carrier’s obligations under Rule 8(e).“**

**A review of the decision of the Board in Third Division 39710 leads to the conclusion that it is neither clearly nor palpably erroneous, the standard applied by the Board for not following a decision issued between the same parties on the same issue. See, e.g. Third Division Awards 28618 and 27810. Thus, the interpretation of Rule 8(d) concerning the Carrier’s obligation to reimburse for the time and travel expenses herein claimed, is *stare decisis*.**

**As noted by the Organization, in that decision the Board pointed out that no evidence of past practice was presented. Even if the Board were to consider past practice to be relevant in the face of an interpretation of a clear provision of the Agreement, and the statements submitted by the Organization in this case to constitute evidence of past practice, the record clearly establishes that the Carrier submitted contrary documentation, raising an irreconcilable dispute in fact. Under such circumstances, the Organization cannot meet its burden of proving a violation of the Agreement in this case. For those reasons, the claim must be denied.**

**AWARD**

**Claim denied.**

**Form 1  
Page 5**

**Award No. 43023  
Docket No. MW-42381  
18-3-NRAB-00003-130390**

**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 29th day of March 2018.**