

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43086
Docket No. MW-43722
18-3-NRAB-00003-160511**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
PARTIES TO DISPUTE: (IBT Rail Conference
(
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to comply with Article V of the BMWWE Mediation Agreement-A-8853 dated February 10, 1971 as amended October 30, 1978 and September 26, 1996 following an injury sustained by Mr. R. Ady on January 14, 2015 and continuing (System File C30382715/2015-182082 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Ady shall be ‘... provided the coverage under the plan at 80% of his basic full-time weekly compensation from the carrier for the time lost, beginning after the accident and continuing.’”**

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.

On January 14, 2015 the Claimant was assigned to a Welder Track and Structural position headquartered at Beckley, West Virginia. His regular work hours were 7:00 am to 3:30 pm. At approximately 6:30 am on that date, the Claimant was driving a Carrier vehicle and it was struck by an outside party. The Claimant sustained injuries that prevented his immediate return to work. A claim was made on his behalf for benefits under the Off Track Vehicle Agreement. The claim was denied by the Carrier, asserting he was not entitled to the benefits because he was commuting to work and was not under pay at the time of the accident.

Mediation Agreement A-8853, also known as the Off Track Vehicle Agreement, provides for compensation for employees injured while riding in or operating an off-track vehicle while under pay. The relevant portions of the Agreement state:

**“ARTICLE V – PAYMENTS TO EMPLOYEES INJURED UNDER
CERTAIN CIRCUMSTANCES**

Where employees sustain personal injuries or death under the conditions set forth in paragraph (a) below, the carrier will provide and pay such employees, or their personal representative, the applicable amounts set forth in paragraph (b) below, subject to the provisions of other paragraphs in this Article.

A. Covered Conditions –

This article is intended to cover accidents involving employees covered by this Agreement while such employees are operating, riding in, Boarding, or alighting from off-track vehicles authorized by the carrier and any accident which occurs while an employee is under pay.

* * *

D. Exclusions:

Benefits provided under paragraph B shall not be payable for or under any of the following conditions:

* * *

- (6) While an employee is commuting to and/or from his residence or place of business.

According to the Organization, the Claimant had been attending a Safety Certification session at Lexington, Virginia on January 12 and 13, 2015. It says the Roadmaster had directed him to drive the vehicle from his residence to the training site, and then back home at the end of the day. The Claimant's statement indicates the Roadmaster had him pick up the truck on Sunday, January 11, and use his residence as the starting and ending point for the training because he lived 40 miles closer to the training site. When the training was completed on January 13, 2015, the Roadmaster allowed the Claimant to take the vehicle home rather than return it to the headquarters first before going home.

Based upon these facts, the Board finds that the Claimant was going from his residence to his regular shift at his headquarters. This constitutes commuting and is excluded as a condition that would entitle him to the benefits of the Off Track Vehicle Agreement. The denial of the benefits, therefore, was not in violation of the Agreement.

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 2nd day of May 2018.