

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43226
Docket No. MW-43326
18-3-NRAB-00003-140398**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(BNSF Railway Company (former ATSF Railway)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly compensate Mr. R. Rumsey for overtime service driving a Carrier vehicle on May 1 and 2, 2013 (System File 40-SF33-1350/14-13-0302 ATS).**
- (2) The Agreement was violated when the Carrier failed and refused to properly compensate Mr. A. Venturi for overtime service driving a Carrier vehicle on May 9, 2013 (System File 140-SF33-1343/14-13-0300).**
- (3) The Agreement was violated when the Carrier failed and refused to properly compensate Mr. A. Venturi for overtime service driving a Carrier vehicle on March 31, 2013 (System File 140-SF33-1349/ 14-13-030 I).**
- (4) As a consequence of the violation referred to in Part (1) above, Claimant R. Rumsey shall be compensated two (2) hours at his applicable overtime rate of pay.**
- (5) As a consequence of the violation referred to in Part (2) above, Claimant A. Venturi shall be compensated three (3) hours at his applicable overtime rate of pay.**
- (6) As a consequence of the violation referred to in Part (3) above, Claimant A. Venturi shall be compensated four (4) hours at his applicable overtime 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 Organization filed a claim alleging that the Carrier used violated the Agreement when it failed to comply with Rule 33 and pay the Claimants for overtime work. The Claimants are Safety Facilitators and drove company vehicles, company equipment, and company personnel.

The Carrier counters that the Safety Assistant is a unique position. The vehicle is company-supplied and is used to transport the safety facilitator equipment for presentations to BNSF employees. Rule 37 regarding Travel Time and Mileage Expense applies and the Claimants were paid according to that Rule.

RULE 33-provides:

“OVERTIME SERVICE 33(a) Service After and Continuous With Regular Work Period. Except as otherwise provided in these rules, time worked on any day outside of, before or after and continuous with a regularly assigned eight-hour work period, will be paid for at the rate of time and one-half on the minute basis.”

Appendix 59 provides:

II. Safety Assistants

- A. BNSF will establish at least one full-time maintenance of way safety assistant position for each operating division. An employee holding such a position will be responsible for coordinating safety meetings, training and the like on the operating division he covers. (which may cover more than one seniority district). The safety assistant shall report to the division manager of safety and rules.
- B. Each safety assistant position will be filled by an employee designated by the BMWE general committee representing employees on the covered territory. Each safety assistant shall serve a term not to exceed three years. Each position vacated by an employee assuming a safety assistant position shall be placed up for bid. [amended by Letter of Understanding 5/08/01]
- C. Each full-time safety assistant shall be paid at the headquartered section foreman's rate of pay or the employee's previous rate of pay, whichever is higher, and will otherwise perform his/her duties under applicable schedule rules. Each safety assistant position shall be deemed headquartered at the BNSF station closest to the safety assistant's place of residence.

This Division has reviewed the record. The applicable Rules provide:

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In the instant matter, Safety Assistants are in a unique situation. Like many railroad employees, their travel is a key aspect of their job. Travel is included in the Appendix 59 job description. The Carrier maintains that the transportation of safety training equipment in a company vehicle is part of travel to a job site. The Organization argues that the Safety Facilitator is not traveling as a passenger. Rather, they are providing a service by driving the van and the equipment to the next site.

The evidence shows that a Safety Facilitator does not travel in the company vehicle while transporting company safety training equipment to attend a training – thereby making the travel subject to Rule 37. The Safety Facilitator is traveling from one location to another in a company vehicle with company supplies in order to deliver the safety training. The work done to move the equipment and drive the vehicle is done at the company's behest. That work is more than simply travel to

attend a training. The travel and movement of equipment and personnel in a company vehicle is a service to the Carrier.

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 26th day of June 2018.