

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43241
Docket No. MW-43908
18-3-NRAB-00003-160556**

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

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

**PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier recouped weekend travel allowance payments from various mobile gang employes by cut letters issued in March 2015 and when it continued not to allow affected employes to receive subsequent travel allowance payments (System File 60-SFA22-156/14-15-0261 BNR/ATS/SLF).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants F. Van Nahmen, B. Hayes, L. Drones, Jr., J. Williams, J. Wood, M. Aguilar, M. Delgado, Jr., S. Joest, M. Lucero and R. Kenton shall each ‘. . . be paid all Travel Allowances they have been denied from receiving by the Carrier as Settlement. In addition the Carrier must reinstate the ability of the employees to claim their Travel Allowance through the regular payroll process.”**

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 violated the Agreement when it recouped Travel Allowance payments ("PC55 payments) from the Claimants. The Organization continues that the Claimants complied with the Rule by tendering original receipts to the Carrier supervisor. The Carrier supervisor faxed the receipts to the appropriate Carrier Payroll Department and the Claimants were compensated. The receipts were mailed by the Supervisor, but the originals were never received by the Carrier. The Carrier sent cut notices and recovered the money from the Claimants.

According to the Organization, the analysis is simple and straightforward. The Claimants complied with the Rule by timely submitting original receipts to a Carrier supervisor. The Claimants were paid and cut notices were later sent when the original receipts were not received. The Claimants complied with the Rule. What occurred with the original receipts was beyond their control and they should not be liable for a supervisor or Carrier mistake. The Carrier selected who was to receive the original receipts and the employees tendered those receipts when they returned from rest day visits to their homes.

The Carrier responds that the Rule is specific and straightforward. According to the Carrier, both parties agree that original receipts are required for employees to receive the Travel Allowance. The Claimants gave their receipts to a Foreman and not a Manager. There was no mention of to whom the receipts were given. According to the Carrier, the Rule is clear and absent an original receipt, there is no way to validate originality.

The Carrier continues that the Rule is clear about the definition of an original receipt. The Organization filed a claim for numerous Claimants. However, the claims are not the same – some employees allege that their travel allowances payments were recouped due to no original receipts. The employees' payments were recouped when the audit revealed that they could not have traveled the distance claimed in the time allotted. There was an internal process to dispute the payments, but the employees did not use the Carrier process.

This Division has reviewed the record. Appendix 22, (ATSF), Rule 38 and Appendix LL (BNR), and Rule 84 (SLF) all provide in paragraph 6:

“For round trips in excess of 500 miles, a valid receipt for each trip claimed must accompany the Article XIV Travel Allowance benefit form in addition to employee certification on that form that claimed trips were actually made.”

Paragraph 8 provides in relevant part:

“Under this Agreement, a valid receipt is defined as either an original bonafide business mechanical receipt for purchase, or an original bonafide business transaction record, either of which must be a record of a transaction consummated by the employee at his/her home residence location over the claimed rest day home.”

Paragraph 10 provides:

“Travel Allowance benefit forms must be filed promptly with the appropriate supervisor or other designated authority upon the employees return to the gang following the rest day trip home.

In the instant matter, the Claimants submitted their original receipts to a foreman and those receipts were faxed to the Payroll Department. The employees ceased to have control over the original receipts when they were submitted. The Carrier received the faxes and paid the employees pursuant to the fax copies of the receipts. These faxes and payments are proof that a receipt was tendered and forwarded.

That Carrier did not have copies of the original receipts is beyond the control of the employees who tendered them. They obviously existed when they were submitted, or the Carrier would have nothing upon which to calculate the Travel Allowance payments that were made. When the employees tendered the original receipts, the Carrier became responsible for the receipts. The Carrier cannot logically deny the existence of the receipts. The Travel Allowances should not have been recouped by the Carrier. Those claims are granted.

The Carrier raises a valid defense to some of the claims. The Carrier denied some of the claims for reasons such as the employee could not have made the trip in the time allotted or that the receipts did not match the employee's home. Those claims are denied.

The Organization's Submission Exhibit A-1, Attachment 1, Sheets 1 through 11, contains a record of all the recouped Travel Allowances in the instant claim. The Claims for the following Sheets are granted: 5, 6, 7, 9 and 11. All others are denied.

Claim sustained in part.

AWARD

Claim sustained in accordance with the Findings.

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.