

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43455  
Docket No. MW-44420  
19-3-NRAB-00003-170530**

**The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Keolis Commuter Services, LLC**

**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 Ms. D. Bonnell travel time compensation and mileage reimbursement in connection with the use of her personal vehicle for overtime work performed on various dates between May 14, 2016 and May 22, 2016 (Carrier’s File BMWE 07/2016 KLS).**
- (2) The Agreement was violated when the Carrier failed and refused to allow Mr. B. Kyles travel time compensation and mileage reimbursement in connection with the use of his personal vehicle for overtime work performed on various dates between May 24, 2016 and May 26, 2016 (Carrier’s File BMWE 08/2016).**
- (3) The Agreement was violated when the Carrier failed and refused to allow Mr. D. Medrano travel time compensation and mileage reimbursement in connection with the use of his personal vehicle for overtime work performed on various dates between April 30, 2016 and May 14, 2016 (Carrier’s File BMWE 09/2016).**
- (4) The Agreement was violated when the Carrier failed and refused to allow Mr. M. Bry travel time compensation and mileage reimbursement in connection with the use of his personal vehicle for overtime work performed on various dates between May 1, 2016 and June 15, 2016 (Carrier’s File BMWE 10/2016).**

- (5) The Agreement was violated when the Carrier failed and refused to allow Mr. J. Crawford travel time compensation and mileage reimbursement in connection with the use of his personal vehicle for overtime work performed on various dates between April 28, 2016 and May 14, 2016 (Carrier's File BMW 11/2016).**
- (6) The Agreement was violated when the Carrier failed and refused to allow Mr. L. Donnelly travel time compensation and mileage reimbursement in connection with the use of his personal vehicle for overtime work performed on various dates between May 15, 2016 and June 25, 2016 (Carrier's File BMW 12/2016).**
- (7) The Agreement was violated when the Carrier failed and refused to allow Mr. L. Neves travel time compensation and mileage reimbursement in connection with the use of his personal vehicle for overtime work performed on various dates between May 15, 2016 and June 25, 2016 (Carrier's File BMW 13/2016).**
- (8) As a consequence of the violation referred to in Part (1) above, Claimant D. Bonnell shall now be compensated '\*\*\* for unpaid mileage in the amount of \$237.60, and unpaid travel time totaling 14 hours, 40 minutes.'**
- (9) As a consequence of the violation referred to in Part (2) above, Claimant B. Kyles shall now be compensated '\*\*\* for unpaid mileage in the amount of \$12.96 and unpaid travel time totaling 48 minutes.'**
- (10) As a consequence of the violation referred to in Part (3) above, Claimant D. Medrano shall now be compensated '\*\*\* for unpaid mileage in the amount of \$124.20 and unpaid travel time totaling 7 hours, 40 minutes.'**
- (11) As a consequence of the violation referred to in Part (4) above, Claimant M. Bry shall now be compensated '\*\*\* for unpaid mileage in the amount of \$120.96 and unpaid travel time totaling 7 hours, 28 minutes.'**

- (12) As a consequence of the violation referred to in Part (5) above, Claimant J. Crawford shall now be compensated ‘\*\*\* for unpaid mileage in the amount of \$44.28 and unpaid travel time totaling 2 hours, 44 minutes.’**
- (13) As a consequence of the violation referred to in Part (6) above, Claimant L. Donnelly shall now be compensated ‘\*\*\* for unpaid mileage in the amount of \$165.78, and unpaid travel time totaling 10 hours, 14 minutes.’**
- (14) As a consequence of the violation referred to in Part (7) above, Claimant L. Neves shall now be compensated ‘\*\*\* for unpaid mileage in the amount of \$40.50 and unpaid travel time totaling 2 hours, 30 minutes.’”**

**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 the instant claims on behalf of the Claimants, alleging that the Carrier violated the parties’ Agreement when it failed and refused to allow each of the Claimants travel time compensation and mileage reimbursement in connection with their use of their personal vehicles for overtime work performed on various dates in April, May, and June 2016. The Carrier denied the claims.**

**The Organization contends that the instant claims should be sustained in their entirety because there is no dispute that the Claimants used their personal vehicles in connection with the performance of overtime work during the cited claim periods,**

because the Carrier violated the Agreement by refusing the Claimants travel time compensation and mileage reimbursements, because there is no merit to the Carrier's stated defense that the Claimants are not entitled to travel time compensation and mileage reimbursement because overtime is voluntary, and because the Claimants are entitled to the requested remedy. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof, because the Carrier did not direct any of the Claimants to perform the voluntary overtime work for which they are seeking this pay and reimbursement, because Carrier direction is a necessary prerequisite under the Agreement for such pay and reimbursement, because the Organization failed to establish the existence of any past practice on this issue, and because the Claimants are not entitled to travel pay and mileage reimbursement under the circumstances.

The parties being unable to resolve their dispute, this matter came before this Board.

The Board has reviewed the record in this case, and we find that the Organization has met its burden of proof that the Carrier violated the Agreement when it failed to allow the fourteen Claimants travel time compensation and mileage reimbursement in connection with their use of their personal vehicles for overtime work performed on various dates between May 14, 2016, and May 22, 2016.

The rule at issue is Rule 32, which states the following:

**"Except as otherwise provided, the following rule will apply:**

- 1) An employee waiting, or traveling by direction of MBCR by passenger train, motor car, or any other method of transportation will be allowed straight-time for actual time waiting and/or traveling during or outside of the regularly assigned hours.**
- 2) When authorized to use their personal vehicle, the employee will receive the standard MBCR/IRS authorized mileage reimbursement.**
- 3) This rule does not apply to employees waiting or traveling in the exercise of their seniority rights."**

The Carrier relies on the words “by direction of MBCR” and says that it can deny the travel reimbursement to the Claimants because they were working on a voluntary basis. This Board disagrees. A review of that rule makes it clear that if the parties did not want it to apply to some cases, such as is pointed out in Paragraph 3, “in the exercise of their seniority rights,” then the parties could have made another exception to that rule. The rule does not have an exception for cases where the overtime is voluntary. The Carrier argues that the words “by direction” make it clear that the rule only applies to work that is involuntary. This Board has reviewed the rule and disagrees.

The Organization has met its burden of proof in this case and, therefore, the claims are sustained.

**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 1st day of March 2019.**

**CARRIER MEMBERS' DISSENT**  
**to**  
**THIRD DIVISION AWARD 43455 - DOCKET NO. MW-44420**

**(Referee Peter R. Meyers)**

**The Carrier hereby respectfully dissents from the majority of the Board.**

**In its award, the majority reached the errant conclusion that Rule 32, "Travel Time," applies to voluntary overtime because "if the parties did not want it to apply to some cases, such as is pointed out in Paragraph 3, 'in the exercise of their seniority rights,' then the parties could have made another exception to that rule." See Award at Pg. 4.**

**The only way to reach this conclusion is to ignore the plain language of the contract in violation of well settled contract law principles. As stated in *New Jersey Transit Rail Operations*, SBA 1019, Case No. 1 at 8 (Van Wart, June 18, 1987):**

**However onerous the terms of an agreement may be, they must be enforced if such is the meaning of the language used, and the intention of the parties using that language.**

**(Emphasis in original)**

**Rule 32 states:**

**Rule 32, Travel Time**

**Except as otherwise provided, the following rule will apply to territories governed by the BMW Corporate Agreement.**

- 1. An employee waiting, or traveling by direction of Amtrak by passenger train, motor car or any other method of transportation, will be allowed straight time for actual time waiting and/or traveling during or outside of the regularly assigned hours.**
- 2. When authorized to use their personal vehicle, the employee will receive the standard Amtrak authorized mileage reimbursement.**

**3. This rule does not apply to employees waiting or traveling in the exercise of their seniority rights.**

**(Emphasis added)**

**The language of Rule 32 is clear that a predicate to any travel pay or mileage reimbursement is that such travel is “by direction of” the Carrier. It is axiomatic that “in the absence of extrinsic evidence, when each of the parties has a different understanding of what is intended by certain contract language, the party whose understanding is in accord with the ordinary meaning of that language is entitled to prevail.” Bloomberg BNA, Elkouri & Elkouri, “How Arbitration Works,” 8th Edition, Chapter 9, at 9-22. “By direction of” clearly and concisely requires that there be an order to perform work for this provision to be applicable.**

**The reasoning for this language is plain: if the Carrier is going to require an employee to travel to perform work and the employee has no choice but to do so, the travel time should be paid and mileage on a personal vehicle, when authorized, should be reimbursed. However, when the employee is working voluntarily, beyond their scheduled hours at an elevated overtime rate, it is the employee’s decision to do so and such work is not “by direction of” the Carrier. By removing any requirement or obligation that the employee travel for work, so is removed any obligation to pay for travel or to reimburse for mileage.**

**It is undisputed that each Claimant in this matter performed services that were outside of their normal work schedules and that each Claimant volunteered to perform work. None were directed or otherwise obligated to perform work, or to travel for such work. They were driven by their own desire to earn overtime rates on additional work.**

**The finding that if the parties wanted to exclude overtime from Rule 32, they would have added another section to the Rule is fundamentally unreasonable. There is no need to have further language explicitly excluding overtime since the plain language already explicitly precludes its application to voluntary overtime by predicating travel time pay to instances where such travel is by direction of the Carrier. Only by disregarding the plain and unambiguous language of the agreement can the majority reach the conclusion it has reached.**

**Rule 32, section 3 gives no indication or support, whatsoever, that there was ever any intent to apply Rule 32 to voluntary overtime. Section 3, which addresses travel pay during regular work hours for those waiting or exercising seniority rights, only applies to situations where an employee is already working by direction of the Carrier, i.e. during regular work hours. No part of Rule 32 makes any reference to overtime.**

**There is an entire provision dedicated to overtime compensation: Rule 11. Rule 11 does not grant travel pay or mileage reimbursement for voluntary overtime. If the intent had been to grant such pay or mileage for voluntary overtime, it would have been far more reasonable for Rule 11 to be modified to include language authorizing travel time and mileage reimbursement for voluntary overtime then to add an exception to Rule 32, since the language of Rule 32 already had a predicate that voluntary overtime could not meet. The majority has stretched unreasonably to force the result here and in doing so has significantly deprived the Carrier of its negotiated-for rights and enlarged the rights of the Organization.**

**There is also no evidence in the record whatsoever to show that there was ever any intent to apply Rule 32 to voluntary overtime. As in all contract interpretation matters, the evidentiary burden rests with the Organization. The Organization supplied no evidence in support of its position and the Carrier fully and effectively rebutted the Organization's position during the on-property handling of the matter. There was simply no basis to find as the majority did.**

*John McLaughlin*  
Carrier Member

*Matthew R. Holt*  
Carrier Member

March 1, 2019