**Form 1** **NATIONAL RAILROAD ADJUSTMENT BOARD**
**THIRD DIVISION**

**Award No. 43786**
**Docket No. SG-43982**
**19-3-NRAB-00003-170010**

**The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.**

**PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen**
**(CSX Transportation, Inc.**

**STATEMENT OF CLAIM:**

**"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly Louisville & Nashville):**

**Claim on behalf of E.D. Frazier, R.S. Harrison, J.W. McAllister, D. Page, J.E. Picklesimer, and M.H. Plaster; for Claimant Frazier, $178.25; Claimant Harrison, $558.07; Claimant McAllister, $161.00; Claimant Page, $571.65; Claimant Picklesimer, $465.07; and Claimant Plaster, $479.45; account Carrier violated the current Signalmen's Agreement, particularly Rule 29, CSXT Labor Agreement No. 15-093-98, and CSXT Labor Agreement No. 15-055-00, when, on June 21, 25, and 28, 2015, it refused to compensate the Claimants for the mileage expense they incurred and the time they traveled after being required to leave the L&N property and travel in excess of 300 miles to attend Safety Certification in Indianapolis, Indiana. Carrier's File No. 2015-192256. General Chairman's File No. 15-SYS-01. BRS File Case No. 15473-L&N."**

**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.**

**This is a dispute about reimbursement for travel expenses and travel time for employees who attend mandatory Carrier training. The parties have negotiated several contract provisions dealing with reimbursement of employee expenses incurred in association with training and travel out of their home territory. Rule 29 of the basic Agreement states:**

> **"(a) Employees sent away from home station or territory will be reimbursed for actual additional necessary expenses incurred for meals and lodging. Expenditures of any other kind which any employee is instructed to incur will also be reimbursed.**
>
> **(b) Employees will be paid a month's expenses not later than the time when they are paid for the service rendered during the last half of the month."**

**CSXT Labor Agreement No. 15-093-98, Section 2.A, states, in relevant part:**

> **". . . . .**
> **(3) For each work week, employees driving their personal vehicle will be paid mileage in both directions from the point they leave the property [(region) see note below] to the point they are required to report; at the IRS rate (presently 32 ½ cents per mile). In addition mileage will be paid if the employee is required to move to a different reporting location during the work week.**
>
> **(4) The mileage in this Rule will be determined by the most direct highway miles traveled.**
>
> **NOTE: The point they leave their region shall be defined as the point on their region which is closest to the point they are required to report off-region.**
> **. . . . ."**

**Finally, CSXT Labor Agreement No. 15-055-99, the New Hire Apprentice Training Program, Section C.2 reads:**

> **"Transportation to and from the training location will be provided by or paid for by the Carrier. Employees traveling less than 300 miles one way or 600 miles round trip will receive per diem for meals and the current mileage reimbursement rate if they use their own vehicle. Employees who will have to travel over 300 miles one way or 600 miles round trip will be provided pre-paid airfare or mileage reimbursement and travel time from their residence. When driving, travel time will be paid at the rate of one (1) hour for every fifty (50) miles in excess of 300 miles each way. The Carrier will work with BRS in special circumstances."**

**The Claimants are assigned to positions on various System Construction Signal Gangs with the Carrier. From June 21-15, 2015, the Carrier required Claimants from the Western Region to attend Safety Certification off the Louisville & Nashville property in Indianapolis, Indiana. From June 29 through July 2, 2015, the Carrier required Claimants from the Southern Region to attend Safety Certification in Montgomery, Alabama. The training ran during the normal Monday-Friday workweek. Some of the Claimants, however, worked alternate 8 on/6 off schedules, Tuesday to Tuesday. Employees are required to attend Safety Certification training twice a year.**

**The Organization filed this claim on August 7, 2015, alleging that the Carrier failed properly to compensate Claimants for their travel time and mileage expenses. Specifically, it alleged that Claimants should have been compensated for mid-week moves and also for mileage and travel time from their residences. The Carrier denied the claim by letter dated October 5, 2015, on the basis that Claimants were compensated properly: employees who were required to travel off-property received an allowance of one hour for every fifty miles traveled, from the closest point leaving the L&N property; employees who were not required to leave L&N property were not eligible for additional compensation; and employees are not compensated time and/or mileage from their residence for the purpose of attending Safety Certification training. The Organization appealed on December 2, 2015, clarifying its position—pursuant to CSXT Labor Agreement #15-093-99, "mileage will be paid if the employee is required to move to a different reporting location during the work week." Because all Claimants had to change to a different reporting location during the work week, they were entitled to be**

**paid their total mileage. In addition, under CSXT Labor Agreement #15-055-99, Section (5) states that employees "required to travel off their home property (or region) in excess of three hundred (300) miles from their residence to a work location will be provided prepaid airfare or mileage and travel time from their home…" The Carrier denied the appeal by letter dated January 19, 2015, reiterating its earlier position and noting that the parties have discussed the subject of payment for travel to safety certification numerous times without reaching agreement. It also noted that Agreement 15-055-99 did not apply, as it pertains only to signal apprentices traveling to a training facility. The Carrier did not violate Agreement 15-093-98 2(A)(3) because the Claimants were not performing work when they attended training. The parties having been unable to resolve the dispute through the normal claims procedure, the matter was appealed to the Board for final and binding adjudication.**

**The Organization contends that the Carrier violated Labor Agreement No. 15-093-98, Section 2.A(3), when it compensated Claimants who traveled off-property only for travel time from the nearest point of the property to the off-property location. Other provisions cover mileage reimbursement for workweek reporting location changes and travel in excess of 300 miles from one's residence. The training locations, Indianapolis and Montgomery, were locations that the Claimants were required to report to, and they were required to go to different locations during the same workweek, establishing a different reporting location. The language of Agreement No. 15-093-98 states that "mileage *will be paid* if the employee is required to move to a different reporting location during the work week." There is no reference to work or training. The Carrier required Claimants to report to two locations during a single workweek and they are contractually entitled to reimbursement of their mileage. The Carrier's failure to pay Claimants their travel expenses also violated Rule 29 of the current Signalmen's Agreement, which provides that employees will be paid for expenses by the time they are paid for the service rendered.**

**According to the Organization, Claimants were properly paid in accordance with the Agreement. The record submitted by the Organization is vague and the claims are very different; as a result, the Organization has not met its burden of proof to establish that Claimants were not properly compensated for their travel. It is well established that pay for travel and training is to be paid at straight time rates. Each of the Claimants received overtime pay on at least one day of the training, resulting in a minimum of four hours' overpayment for the dates claimed. Claimants also received travel arbitrary pay, floating travel pay and some earned incursion travel pay. Travel pay is not meant to**

**enrich the employee, and it is clear that the Carrier paid travel through the overtime compensation. Without a claim submitted in more detail, it can only be determined that each Claimant was already properly paid. Moreover, the Organization asserts that Claimants were not paid for their mileage. It failed to provide substantive proof other than listing the miles it alleges each claimant traveled and the amount it believes they should be paid. None of the agreement language submitted by the Organization supports its claims. Labor Agreement 15-055-99 does not apply in this case, because it is the New Hire Apprentice Training Agreement and has no application for Safety Certification classes that all employees must take. The Organization has the burden of proof and it has failed to prove the elements of its claim.**

**The Carrier's initial response to the claim, dated October 5, 2015, explained how the Carrier determined travel compensation for the Claimants:**

> **"For those employees who were required to travel off their property, an allowance of one hour for every fifty miles traveled, from the closest point leaving the L&N territory was allowed. . . . Employees who were not required to leave the L&N property were not eligible for additional compensation.**
>
> **Employees are not compensated time and/or mileage from their residence for the purpose of attending Safety Certification training."**

**The Carrier is correct that the record is not as clear as it might be. However, the Board is still in a position to be able to draw some conclusions from the evidence that is before it. The Carrier did not dispute that the Claimants were required to travel off their home properties in order to attend the mandatory Safety Certification training, whether it was in Indianapolis or in Montgomery. According to the payroll records summarized by the Carrier in its submission, two of the Claimants (Plaster and Page) received "incursion pay," but it does not appear that any of the other Claimants received travel pay, as defined by the Carrier in its initial declination to be "one hour for every fifty miles traveled from the closest point leaving the L&N territory." It may be that they were not entitled to it, because they did not travel the minimum fifty miles from the closest point where they left the Louisville & Nashville territory to Indianapolis, or in the case of Claimant McAllister, from leaving his territory and going off property to Montgomery for the Safety Certification training there. But those geographic locations and mileages can readily be determined. The Carrier avers that it compensated**

**Claimants properly for travel time (incursion pay), but the record does not obviously support that contention. The Board will remand the matter back to the parties for clarification of the underlying facts that will determine which, if any, of the Claimants is entitled to travel pay per the Carrier's stated policy.**

**Regarding Claimants' mileage expenses associated with traveling to Indianapolis or Montgomery, there is no evidence in the record that any of the Claimants were paid any mileage reimbursement associated with attending the Safety Certification training off-property. The Carrier is correct that CSXT Labor Agreement No. 15-055-09, the New Hire Apprentice Training Agreement, does not apply here. CSXT Labor Agreement No. 15-093-98 does, however. Section 2.A(3) states:**

> **"For each work week, employees driving their personal vehicle *will be paid mileage in both directions from the point they leave the property* [(region) see note below] *to the point they are required to report*; at the IRS rate (presently 32 ½ cents per mile). In addition *mileage will be paid if the employee is required to move to a different reporting location during the work week*. (Emphasis added.)"**

**Claimants were directed to report to an off-property location to attend the Safety Certification training. Pursuant to Section 2.A(3), they were entitled to be paid mileage in both directions from the closest point where they left their home property to the reporting location. The Safety Certification training did not last all week, and Claimants were then required to report to various other locations to continue their work week. That implicates the last sentence of Section 2.A(3): "mileage will be paid if the employee is required to move to a different reporting location during the work week." The evidence in the record is not sufficient to determine if there is any difference between Claimants' round-trip mileage from their home property to the training location and the mileage from their home property to the training location and from there to their reporting location for the rest of the week, but the parties should be able to determine that, as well as the actual mileage from the closest point on-property to Indianapolis or Montgomery, from their records.**

**In its submission, the Carrier distinguished between "work" and "training," which the Board has held not to be work, but something of benefit to both the Carrier and its employees, in order to argue that because employees were not "working" they were not entitled to various travel expense reimbursements. The argument is not**

**persuasive. The language of Section 2.A(3) does not reference "work," nor does it differentiate between working and training. It speaks only to reporting locations and where employees are required by the Carrier to report, and it requires the Carrier to pay employees mileage when they are directed to report off-property.**

**Finally, the Organization argued that Claimants who had to travel more than 300 miles from their residences should be reimbursed for that mileage. That argument, however, is based on language in CSXT Labor Agreement No. 15-055-99, which does not apply here. Claimants are entitled to mileage reimbursement from where they leave their property to the off-property reporting location.**

**The Board will remand the claim to the parties for them to determine how much each Claimant is entitled to by way of mileage reimbursement. The parties need not rely on mileage estimates from the Claimants; there are numerous resources on the Internet that can assist in determining the actual distances involved.**

## 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 16th day of July 2019.**