

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43792
Docket No. SG-44302
19-3-NRAB-00003-170385**

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

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly C&O Pere Marquette):

Claim on behalf of K.D. Davidson, for \$345.00 in mileage expense (600 miles at \$0.575); account Carrier violated the current Signalmen’s Agreement, particularly Rule 216 and CSCT Labor Agreement No. 15-093-98, when, on October 30 and 31, 2015, Carrier refused to compensate the Claimant for the miles he incurred in his personal vehicle when, on his rest days, he traveled from an off-district work location at Lafayette, Indiana, to his home and then back to the off-district work location at Lafayette, Indiana. Carrier’s File No. 2015-199981. General Chairman’s File No. 15-01-PM. BRS File Case No. 15649-C&O (PM).”

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 Claimant, K.D. Davidson, is a Signal Maintainer on Construction Gang 7P46; his home property is in Lansing, Michigan. His normal schedule is 0700 to 1700 for four days, with rest days Friday through Sunday. On October 20, 2015, his gang was assigned to do a cut-in at an off-property location in Lafayette, Indiana, to which the Claimant drove from his home in his personal vehicle on October 21, 2015, a distance of 300 miles. Employees were expected to stay through the end of the cut on Sunday, October 31, 2015. On his rest days, October 30 and 31, 2015, the Claimant drove home and back, a distance of roughly 600 miles. He submitted an expense report on November 9, 2015, and was paid for his travel time, but the Carrier refused to reimburse him for the mileage he incurred. The record includes a statement from the Claimant explaining his actions. In relevant part, it states:

“... On Friday, 10/16/2015, a makeup day, I chose to drive a company vehicle to Cleveland, OH to assist with a cut in on the former Conrail property... The work was said to last only two days ... On Monday, 10/19/2015 while still in Cleveland, OH at the end of our 12 hour day we were informed that we would be traveling to Lafayette, IN the following morning. The morning of 10/20/2015 we were then informed that we were to report back to Lansing, MI to retrieve our boom truck, backhoe and vac trailer and would begin our move to Lafayette in the AM.... At midday on Thursday 10/22/2015 we completed our move to Lafayette, IN and started work on a project that needed to be complete by Sunday 10/31/2015. I chose along with my teammates to work 12 hour days until the project was done, foregoing our rest days. This was despite already having worked through our rest days the week prior in Cleveland. On Friday 10/30/2015 after working 12 hours and completing our location I chose to go home so I could clean my clothes, pay my bills and give my wife her birthday presents since I would be at work on her birthday. On Saturday 10/31/2015 late in the evening I traveled back to Lafayette so I could attend the cut in meeting where attendance was expected. On Thursday 11/05/2015 we completed our move back to Lansing, MI and I submitted my expenses per the CSXT Labor Agreement No. 15-093-98.... [When the claim for mileage was denied,] Mr. Robert Whitley informed us that because overtime was available I did not have to go home, I chose to go home....”

The Claimant's account was corroborated by an email in the record from his supervisor, Robert Whitley, to CSX Labor Relations, dated June 9, 2016:

"The agreement [with the gang] was they would travel home pick up clothes and work through until the cut in was over. Kevin called on Thursday Evening and informed me he was going home Friday night and returning Sunday. I told Kevin that was his choice but if he went home that would be on his own time since everyone had agreed to work through and we had made one move and I paid mileage to move personal vehicles already to Lafayette, IN. At that time Kevin said family was more important and returned home. I did informed [sic] Kevin that I would be able to pay him one hours pay for every 50 miles traveled totaling six hours on Friday 10/30/15 and six hours on 10/31/15 but would not pay the mileage since Kevin was paid mileage once already to move to Lafayette, IN and paid to move back to Wixom, MI at the end of the cutover."

According to the Organization, the Carrier violated Subpart A(5) of CSXT Labor Agreement when it refused to reimburse him for the mileage incurred in traveling home and back from an off-property location on his rest days. The plain language of Subpart A(5) states that "employees required to travel off their home property ... in excess of three hundred (300) miles from their home *will be provided prepaid airfare or mileage and travel time from their home* at the carrier's option..." (Emphasis added.) There is no dispute in the facts: the Claimant was assigned to work at an off-property location. He drove home on his rest days, more than 300 miles from the off-property location. He is accordingly entitled to be reimbursed for his mileage. The Carrier compensated him for his travel time; it cannot pick and choose which portions of the parties' Agreement it deems appropriate. While the Carrier did not "require" the Claimant to return home on his rest days, he was within his rights to do so.

The Carrier contends that employees are only entitled to mileage reimbursement for driving their personal vehicles when they are initially assigned to work at an off-property location and when they return to their home location at the end of the assignment. The Agreement does not provide for employees to be reimbursed mileage when they choose to return home of their own volition in the middle of an off-property assignment. The Claimant was not "required" by CSXT to travel home on October 30, 2015, and return October 31, 2015. His gang was voluntarily working overtime. Claimant was told that he could travel home on his rest days but that he would not be reimbursed for his mileage and travel time. He chose to travel back to his home, rather

than traveling with the rest of the gang to the site of the cut-in where there was overtime available. The Agreement does not contemplate that an employee may submit expenses or receive additional payment for voluntarily driving back and forth to his home under this scenario. The Carrier is obligated to compensate employees for the initial move from the property and the final move back to the property. There is no provision that allows an employee to arbitrarily leave the job, travel home, then travel back, and submit expenses for the voluntary travel. The Carrier pays for one trip to and one trip from the work location. There is nothing in the Agreement that prohibits the Carrier from reasonably denying mileage to an employee who arbitrarily, of his own choice and not at the direction of the Carrier, leaves the job to travel home, then travel back. The Carrier only paid the travel time as the result of working with the employee in a special circumstance. Rule 216 is not relevant, as it addresses only the time period for payment of submitted expenses. The Organization has failed to show that the Carrier violated any agreements and the claim should be denied.

The Organization has alleged two violations by the Carrier, one of Rule 216 of the Chesapeake & Ohio (Pere Marquette) Agreement and the other of Section 2.A.(5) of CSXT Labor Agreement No. 15-093-98.

Rule 216 states:

“When employees are entitled under the provisions of this Agreement to be reimbursed monthly for expenses incurred by them, they shall be reimbursed as promptly as possible, consistent with accounting practices, but not later than fifteen (15) days after receipt of expense accounts covering such expenses in the office of the Manager—Engineering.”

While the Organization is correct that if the Claimant is entitled to be reimbursed for his mileage, Rule 216 has technically been violated, the Rule is not truly material to the outcome of this case. The Carrier promptly paid the Claimant the amount it believed him to be entitled to. Had it believed that he was entitled to the mileage reimbursement, it would have paid him with the rest of his expenses. Instead, the Carrier is challenging his entitlement to the mileage reimbursement—and Rule 216 only pertains “*when* employees are entitled ... to be reimbursed...” (Emphasis added.) Accordingly, the Board will not further address Rule 216.

The crux of the claim is whether Mr. Davidson is entitled to mileage reimbursement pursuant to CSXT Labor Agreement No. 15-093-98. It provides in relevant part:

“Section 2 — Signal Team Flexibility

A.(5) Employees required to travel off their home property (or region) in excess of three hundred (300) miles from their home to a work location will be provided prepaid airfare or mileage and travel time from their home at the carrier’s option, however, the Carrier will work with the organization in special circumstances.”

The purpose of the provision is to reimburse employees for their travel expenses (or provide prepaid airfare) when they are required by the Carrier to report to work at locations distant from their home property or region. According to the Carrier, the intent was to pay employees for the initial trip to the new location and for the return trip home, but not for any interim travel. The critical word is “*required*.” Under Section 2.A(5), employees are entitled to mileage reimbursement when they are *required by the Carrier* to travel off-property—that is appropriate because the employee has no choice about whether to go or not.

This case asks what happens when an employee who is assigned to work off-property elects to return home on his rest days, then travel back to the off-property location? Certainly employees may do what they want and go where they want on their rest days. The question is whether the Carrier has to pay their expenses when they travel more than 300 miles home. Having considered the record in its entirety, the Board concludes that Section 2.A (5) was not intended to cover interim travel home and back by employees on their rest days. Employees who go home are not required by the Carrier to make the trip, and it is the lack of choice that is the basis for reimbursement. In addition, if employees were reimbursed every time they went home during an off-property assignment, the Carrier would have no control over its expenses, and it is unlikely that it would have agreed to such a proposition.

This is not to say that there may never be circumstances that warrant reimbursement for interim trips home: for example, a death or sudden serious illness in the family presents a good case for the employee being reimbursed. That possibility is presented in the last sentence of Section 2.A (5): “the Carrier will work with the Organization in special circumstances.” The Board holds here only that employees who in the ordinary course of matters drive home and back in the middle of an off-property assignment are not entitled to mileage reimbursement. Employees may return home on their rest days, of course, but Section 2.A (5) does not require that the mileage for such interim trips be reimbursed.

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 16th day of July 2019.