

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43951
Docket No. MW-43070
20-3-NRAB-00003-190384**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel 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 failed and refused to properly compensate Messrs. J. Woolverton, D. Prewett, P. Martin, M. Risner, V. Martin, R. Feldman, D. Callahan, J. King and J. Turney in connection with their being required to attend training at Jasper, Alabama prior to the January 6, 2014 scheduled gang start-up date of Regional System Gang RP- 13 (System File C-14-T075-3/10-14-0150 BNR).**
- (2) As a consequence of the violation referred to in Part (I) above, Claimants J. Woolverton, D. Prewett, P. Martin, M. Risner, V. Martin, R. Feldman, D. Callahan, J. King and J. Turney shall each ' ... be paid their Travel Time computed at the rate of two (2) minutes per mile, as well as, their personal vehicle mileage at the rate of (\$.56) per mile for the travel that they incurred from their respective residences to Jasper Alabama and then from Jasper Alabama back to their respective residences, at their respective rates of pay, as settlement of this claim.”**

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.

On January 1, 2014, Claimants were instructed to report prior to the scheduled start up of Regional System Gang RP-13 (RP 13) on January 6, 2014. The record confirms they used their personal vehicles to travel from their personal residences to Jasper, Alabama on January 1, 2014 and then returned to their residences on January 3, 2014. Applicable provisions of the parties' Agreement provide as follows in pertinent part:

"ARTICLE XIV - TRAVEL ALLOWANCE

Section 1

- (a) At the beginning of the work season employees are required to travel from their homes to the initial reporting location, and at the end of the season they will return home. This location could be hundreds of miles from their residences. During the work season the carriers' service may place them hundreds of miles away from home at the end of each work week. Accordingly, the carriers will pay each employee a minimum travel allowance as follows for all miles actually traveled by the most direct highway route for each round trip:

0 to 100 miles \$0.00
101 to 200 miles \$25.00
201 to 300 miles \$50.00
301 to 400 miles \$75.00
401 to 500 miles \$100.00

Additional \$25.00 payments for each 100 mile increments.

- (b) At the start up and break up of a gang, an allowance will be paid after 50 miles, with a payment of \$12.50 for the mileage between 51 and 100 miles.
- (c) Carriers may provide bus transportation for employees to their home area on weekends. Employees need not elect this option.

"RULE 35. TRAVEL TIME * * *

- B. An employee who is not furnished means of transportation by the Company from one work point to another and who uses other forms of transportation for this purpose shall be reimbursed for the cost of such transportation. If he uses his personal automobile for this purpose in the absence of transportation furnished by the Company, he shall be reimbursed for such use of his automobile on a mileage basis consistent with Company policy but not less than fifteen (15) cents a mile for the mileage from one work point to another. * * ***
- E. Each employee furnished means of transportation by the Company will be paid the amount of travel time computed at straight time rate from one work point to another which the conveyance on which transportation made available by the Company would take regardless of how any employee actually travels from one work point to another. Each employee who is not furnished means of transportation by the Company will be paid the amount of travel time computed at straight time rate from one work point to another which is consumed by the mobile lodging facilities in moving from one work point to another. If an employee's work point is changed during his absence from the work point on a rest day or holiday, he shall be paid any mileage he is required to travel to the new work point in excess of that required to return to his former work point. Waiting between transportation connections enroute will be considered traveling in the application of this rule.**
- F. Employees will not be allowed time while traveling in the exercise of seniority, or between their homes and designated assembling points, or for other personal reasons.**

- G. (1) Employees filling relief assignments or performing extra or temporary service will be paid for travel and waiting time as follows:
- (2) If the time consumed in actual travel, including waiting time enroute, from the headquarters point to the work location, together with necessary time spent waiting for the employee's shift to start, exceeds one (1) hour, or if on completion of his shift necessary time spent waiting for transportation plus the time of travel, including waiting time enroute, necessary to return to his headquarters point or to the next work location exceeds one (1) hours, then the excess over one (1) hour in each case shall be paid for as working time at the straight time rate of the job to which traveled. When employees are traveling by private automobile time shall be computed at the rate of two (2) minutes per mile traveled."

The Organization's claim alleges BNSF failed to properly compensate Claimants for travel from their homes to their Region System Gang assignments when they reported early. It asserts Claimants were reporting for training, and precedent has clearly established travel for training is compensable as Travel Time computed at the rate of two (2) minutes per mile, as well as personal vehicle mileage at the rate of (\$.56) per mile. The Organization also alleged the Company violated the Agreement when it failed to pay Claimants for their return trip home at the end of the workweek.

BNSF denied the Organization's claim on the grounds that Claimants were not performing temporary or extra service, but only reporting early. In the Carrier's view, the right to determine the start date of new positions is a managerial prerogative. It contends the early report was not for training, but to perform preliminary tasks in preparation for routine work. It argues such preparatory work has routinely been handled in advance of the rest of the gang since at least 1996. It maintains the Organization's reliance on Rule 35(G) is misplaced because these Claimants' service was not relief, extra, or temporary. It notes that temporary positions have not existed since November 15, 1996. It insists the service performed on January 2 was work, and contends there is no evidence to the contrary.

The Organization contends that when employees under the Agreement are instructed to attend classes or report prior to the regularly scheduled gang start-up to perform equipment preparations and related work, and utilize their personal vehicles

to accomplish that report, they are entitled to receive compensation for travel time incurred in accordance with Rule 35 of the Agreement. In order to evaluate this argument, the Board must determine whether the Organization has established that the employees in question reported early to fill relief assignments or perform extra or temporary service.

The Carrier provided statements from four different ADMPs which consistently related that foremen arrive early to review qualifications, update rule books, set expectations, get forms ready, share information, complete a pre-job survey, as well as load and unload equipment. Machine operators arrive early to unload equipment, perform maintenance, inspect equipment and gear and insure nothing necessary is missing; truck drivers arrive early to perform maintenance and welders arrive early to set up their trucks and perform pre-job inspections. This evidence was not effectively rebutted by the Organization.

We find that the preparatory tasks described by the Carrier's statements to be inextricably intertwined in the performance of the work itself. Loading, unloading, checking materials, maintaining equipment and updating forms and rule books are ongoing tasks which tend to be more concentrated on start-up. These tasks are not adequately distinctive to render the work "extra" or "temporary."

The Organization has provided ample support by way of arbitral precedent for its contention that the pay it has requested would be due had the employees in question been attending a training program. However, the Organization has not provided evidence to support its claim that Claimants were actually in training during the time in question. We are not persuaded that the performance of preparatory tasks constitutes training. Rather, training programs involve classes, agendas or curricula and manuals, none of which are in evidence here. The Organization has not met its burden of proof.

AWARD

Claim denied.

**Form 1
Page 6**

**Award No. 43951
Docket No. MW-43070
20-3-NRAB-00003-190384**

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 5th day of March 2020.