

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43952  
Docket No. MW-43073  
20-3-NRAB-00003-190385**

**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. R. Baker and C. Kelley per Rule 35 in connection with their being required to perform service on January 4, 2014 moving gang equipment and which also involved the use of their personal vehicles (System File C-14-T075-5/10~14-0155 BNR).**
- (2) As a consequence of the violation referred to in Part (I) above, Claimants R. Baker and C. Kelley shall each ' ... be paid a total of (9.3) hours of Travel Time pay at the straight time rate and \$156.24 for their personal vehicle Mileage, 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.

According to the Organization, on January 1, 2 and 3, 2014, Claimants were in Fort Worth, Texas participating in meetings, training and other work in connection with their gangs' designated January 6, 2014 start-up date. On Saturday, January 4, 2014, the Carrier directed Claimants to drive their personal vehicles from Fort Worth, Texas to Pearland, Texas to perform work in preparation for the scheduled start-up on Monday, January 6, 2014. The Organization notes that none of these assignments, either in Portland or Pearland, were part of their bulletined gang assignments. Each Claimant drove a personal vehicle two hundred seventy-nine (279) miles from one work location to another that was not part of their regular assignment. The Organization contends the Carrier violated the Agreement in its failure to compensate Claimants in accordance with Rule 35(G).

The Carrier argues that Rule 35(F) controls, stating that Claimants "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." It maintains Claimants were simply reporting early. It views the right to determine the start date of new positions as a managerial prerogative. Claimants were not reporting for training but to review expectations, Form B/Speed restrictions, ordering process, and to unload machines. It asserts this work has routinely been handled in advance of the rest of the gang since at least 1996. In the Carrier's assessment, the Organization's reliance on Rule 35 G is misplaced because these Claimants' service is not relief, extra, or temporary.

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."

We are not persuaded that the bulletined assignment controls in this case. Nor do we find past practice to dictate the result in this case. Rather it is the contract that controls here, and the language of the Agreement imposes the criteria of whether employees are filling relief assignments or performing extra or temporary service in order to qualify for Rule 35(G) Travel Time. We find the work preparatory to start up to be inextricably intertwined with routine assignments, and not subject to distinction as "extra" or "temporary." The Organization has not provided evidence that would support a contrary finding. Movement of equipment in the railroad industry is routine, and there would need to be a factual basis for the Board to infer the 'separateness' at

the root of any finding that the travel in question was “extra” within the meaning of the contract. We do not feel we have an adequate record on which to rest such a finding.

**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 5th day of March 2020.