

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43954
Docket No. MW-43077
20-3-NRAB-00003-190387**

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. K. Wesley, J. Six, J. Ellis, B. Kerr, J. Brownlee, S. Douglas, M. Guerrero and J. Moore in connection with their being required to report for training and related duties at Las Cruces, New Mexico prior to the January 6, 2014 scheduled gang start-up date of Regional System Gangs TP03 and SC03 (System File C-14-T075-6/10-14-0169 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants K. Wesley, J. Six, J. Ellis, B. Kerr, J. Brownlee, S. Douglas, M. Guerrero and J. Moore shall each be ' ... paid their Travel Time computed at the rate of two (2) minutes 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 Las Cruces, NM and then from Las Cruces, NM 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.

The Claimants had bid and been assigned to positions on Gang TP-03 and SC-03. The gang start-up was scheduled for January 6, 2014 in Las Cruces, New Mexico. On January 1, 2014, the Carrier instructed the Claimants to report early to Las Cruces, New Mexico on January 2, 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."

Pay records show that Claimants JR Brownlee, SE Douglas, JD Ellis, B Kerr, JA Six and KA Wesely were paid for "formal training" on January 2 and 3. Records for MN Guerrero and JD Moore show they were regularly scheduled that day.

The Organization argues Claimants were not properly paid for attending Leadership Training since it was not part of their gang's bulletined start-up beginning January 6. It views the time preceding January 6 as "extra or temporary work" subject to the Rule 35 compensation. The Carrier disagrees, taking the position that the work was part and parcel of the bulletined start-up as it was preparation for it. It has provided statements from ADMP's R. Roskilly, T. Thomas, L Hichstatter, J. Diefenbach, J. Bainter, M. Heille, and K. Moreland to the effect that standard practice is to pay one way for start up when employees start before bulletined start-up dates in order to perform preliminary tasks. Corroborating statements were provided from Roadmasters N. Criswe, J. Dasilva, T. Knoll, G. Rickard, A. Garcia and D. Fotenos. This evidence, however, supports the Carrier's theory of past practice, which it maintains should control here. We disagree. Concrete contract language should and must be enforced even if the parties have strayed from it over time, for it is the written terms have been negotiated to articulate the parties' Agreement.

We find the Carrier's payroll records to be the most reliable source from which to discern the nature of the work performed before January 6, and whether it constitutes "extra or temporary work" within the meaning of the parties' Agreement. It is well accepted in precedential awards that formal training does constitute "extra" work within the meaning of Rule 35. "** ** [P]rior awards lend support to the conclusion that carrier-directed training classes or programs should be treated as "extra or temporary service" under Rule 35G." Award 42979, p. 4. Award 42971 is similar to the instant case in that only some of the Claimant's payroll records supported the conclusion that they were involved in formal training during the period of time in question. In that case, the Board found the payroll records adequate to establish "extra service," but did not grant claims unsupported by such payroll records. We agree with this analysis. The Organization has met its burden of proof as to Claimants JR Brownlee, SE Douglas, JD Ellis, B. Kerr, JA Six and KA Wesely. The claims of Claimants MN Guerrero and JD Moore are denied for lack of evidence.

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 5th day of March 2020.