

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43965
Docket No. MW-43192
20-3-NRAB-00003-190398**

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 Mr. D. Stirmel in connection with his being required to report for service to St. Joseph, "Missouri on February 18, 2014 prior to the February 24, 2014 scheduled gang start-up date of Regional System Gang RP-05 (System File C-14-T075-8/10-14-0227 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Stinnel shall ' ... be paid the proper mileage rate at that time and the 2 minutes per mile travel time for the trip. [am requesting the claimant be paid at his appropriate rate of pay.
***”**

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 February 18, 2014, the Claimant traveled from his residence to St. Joseph, Missouri in his personal automobile. This was necessary as the Carrier instructed the Claimant to report a week early for his gang's posted start-up date. The Organization maintains the Carrier refused to provide him with the compensation for this trip as required by the parties' contract terms. 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 Carrier maintains Claimants were reporting (exercising seniority) to their respective region/system gang assignments. Rule 35(F) states 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." As the Carrier sees it, the fact that Claimants reported early does not constitute a violation of the Agreement. It is the Company's managerial right to determine the start date of new positions. In this case, the Company determined that Claimants needed to report early, not for training, but to review expectations, Form B/Speed restrictions, ordering process, and to unload machines.

Previous cases on this subject have served to hone the question presented. It is established that if employees are brought to a site prior to start-up for the purpose of formal training, compensation is warranted under Rule 35. If, on the other hand they are brought in early simply to make preparation for the bulletined work, these tasks are inextricably intertwined in the bulletined work itself, and are not to be considered "extra or temporary services."

In this case, there is a paucity of evidence to support the Organization's contention that training actually took place. No payroll record is in evidence showing that the Claimant was paid under "formal training." Instead, the Claimant's payroll record shows that it was 'regularly scheduled.' No agenda shows that the subject matter covered actually fell into the category of 'training' as opposed to preparatory work. As such, it cannot be said that the Organization has met its burden of proof.

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.