

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44061
Docket No. MW-45250
20-3-NRAB-00003-190046**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to comply with Article V of the BMWED Mediation Agreement-A-8856 dated February 10, 1971 as amended October 30, 1978 and September 26, 1996 following an injury sustained by Mr. J. Roll on May 18, 2017 and continuing (Carrier’s File 2017-222714 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Roll shall now be compensated as outlined in Item 3-Time Loss:**

‘Item 3-Time Loss

“The Carrier will provide an employee who is injured as a result of an accident covered under paragraph (a), commencing within 30 days compensation from the Carrier for the time actually lost, subject to a maximum payment of \$1,000.00 per week for time lost during a period of 156 continuous weeks following such accident provided, however, that such weekly payment shall be reduced by such amounts as the employee is entitled to receive as sickness benefits under provisions of the Railroad Unemployment Insurance Act.” (Emphasis in original).”

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 has established and holds seniority within the Carrier's Maintenance of Way Department and at the time of the incident, was assigned as a Vehicle Operator-floating position. On May 18, 2017, he was assigned and working. While the Claimant was driving his personal motorcycle from a training class to lunch, he was involved in an accident with another vehicle. The Claimant sustained injuries which prevented his immediate return to work. The Claimant was ticketed for an at-fault vehicle accident and operating a motorcycle without a motorcycle license. The Claimant was medically cleared to return to work on September 19, 2017.

On June 1, 2017, the Claimant was given notice of an investigation

“to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1150 hours, on May 18, 2017, in the vicinity of Walden Avenue and I-90. You operated your personal motorcycle without a motorcycle license to a safety lunch and was ticketed for an at fault vehicle accident and all circumstances related thereto.”

On June 6, 2017, the Organization filed a request for benefits pursuant to the Off-Track Vehicle (“OTV”) Agreement on behalf of the Claimant, which states, in part:

“A. Covered Conditions

This Article is intended to cover accidents involving employees covered by this agreement while such employees are operating, riding in, boarding, or

alighting from off-track vehicles authorized by the carrier and any accident which occurs while an employee is under pay.”

The Carrier denied the claim for OTV Benefits on July 7, 2017. The Claimant was medically cleared to return to work on September 19, 2017. The parties were unable to resolve the dispute on-property and the claim is now properly before this Board for final adjudication.

The Organization contends that the Claimant was entitled to benefits under the OTV Agreement, because he suffered losses as the result of having been involved in an off-track vehicle accident while in an authorized vehicle and under pay. The Organization contends that these are the only issues in dispute.

The Organization acknowledges that the Claimant was using his own personal vehicle at the time in question, to travel between Carrier functions, but contends that the Carrier “authorized” this vehicle to be used, as the evidence of record clearly shows that Carrier management knew that the Claimant and other employees were using their personal vehicles for their Carrier-concerned transits that day and raised no objection. The Organization contends that the record shows only that the Claimant was charged with driving without a license, but that the Carrier has failed to produce substantial evidence that this was the case. The Organization contends that the Carrier may not withdraw its consent after the fact. The Organization contends that the Carrier wrongfully denied benefits that were due to the Claimant.

The Carrier contends that the Claimant failed to meet the criteria of the OTV Agreement, which requires employees to be on duty and under pay while operating off track vehicles authorized by the Carrier. The Carrier contends that during his disciplinary investigation, the Claimant admitted that he was operating his motorcycle with an expired permit and was on his unpaid lunch at the time of the accident. The Carrier found the Claimant in violation of CSXT Operating Rule 2007.4, which requires employees using personal vehicles to comply with federal, state, and local laws.

The Carrier contends that the Organization has failed to show that the Claimant was driving an authorized vehicle, as he was not properly licensed. In addition, it contends that the Organization failed to show that the Claimant was under pay at the time of the accident.

The claim before this Board addresses only the denial of benefits under the OTV Agreement. As such, the Organization bears the burden of proving the rules violation.

This Board finds that the Organization's proofs fall short. The Claimant admitted that he was driving his personal vehicle even though his driver's permit had expired. The Carrier has successfully argued that it did not authorize the Claimant to operate his personal vehicle in violation of State or local laws, or in violation of Carrier rules. Therefore, the Claimant did not meet the agreed upon criteria to receive benefits.

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 18th day of June 2020.