

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44327
Docket No. 43021
15-3-NRAB-00003-150220
20-3-NRAB-00003-190608**

The Third Division consisted of the regular members and in addition Referee Erica Tener when award was rendered.

**(BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYES DIVISION – IBT RAIL CONFERENCE
PARTIES TO DISPUTE: (
(UNION PACIFIC RAILROAD COMPANY (former
Southern Pacific Western Lines)**

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 Ballast Regulator Operator P. Reyes at his overtime rate of pay for reporting as instructed to participate in a respirator fit test examination with Gang 8170 on December 12, 2013 during his vacation and when it failed and refused to compensate him at the appropriate rate for round trip mileage incurred in traveling from his residence in Fresno, California to Commerce, California and returning to his residence in connection with attending said training and testing service (System File RC-1428S-601/1598683 SPW).

(2) As a consequence of the violation referred to in Part (1) above, Claimant P. Reyes shall ‘... be compensated eight (8) hours of overtime at his respective rate of pay, for the round trip driving time and an additional half time for the three (3) hours already paid, for the work performed by the Claimant on Thursday, December 12, 2013. Furthermore, Claimant Reyes is to be compensated for the 462 round trip miles it took to drive to and from Commerce, California. Payment shall be in addition to any compensation he may have already received.’”

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 December 12, 2013, P. Reyes (Claimant) was directed to report for a respirator fit test at the Carrier's Spence Yard in Commerce, California. The Claimant was on vacation but complied with the request. For the day, the Claimant received payment for three hours at his overtime rate of pay to cover the time it took him to complete the fit test, eight hours of vacation pay and a per diem in the amount of \$86.01. On January 21, 2014, the Organization filed a claim on the Claimant's behalf seeking additional compensation. The parties were unable to resolve the matter after processing it in the normal and customary manner on property. This dispute is now properly before this Board for final adjudication.

The Organization argues Rules 28, 29 and 30 of the parties' collective bargaining agreement controls in this situation. The Claimant lives approximately 232 miles away from the Carrier's facility and it takes him four hours to drive each way. The Organization contends the rules require the following: Rule 28 mandates the Claimant be paid a minimum of three hours overtime for "on-call" pay, Rule 29 entitles him to a reimbursement for travel expenses and Rule 30 covers his travel time.

The Carrier contends the Claimant was provided ninety-days advance notice of when his respiratory fit test was due to expire. He, therefore, had plenty of time to complete the test while at his work site rather than putting it off until the last minute. The Carrier argues the Claimant was compensated in accordance with the Agreement

for December 12, 2013. The Carrier argues the Organization failed to meet its burden to prove that any of the cited Rules are pertinent to this dispute.

The Board has reviewed the on-property record established for this dispute as well as awards cited by the parties in support of their respective positions. As has been previously held, off duty time spent completing a physical examination such as a fit test is not “work” as defined in the Agreement. Nor is there language in the Agreement that covers time an employee spends traveling to and from the testing location. As far as travel expenses, Rule 30 allows for a payment of mileage when an employee must travel from one work site to another. In this case, the Claimant was traveling from his home location to the work site to complete an OSHA mandated test. Furthermore, the Claimant could have completed this test while at his work site at anytime during the ninety-day notice period rather than interrupting his vacation time.

The burden of proof lies with the Organization in the instant claim. For all the reasons cited above, the Board finds this claim must be denied in its entirety. The Claimant was properly paid for his time on December 12, 2013 and is not entitled to any additional compensation.

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 6th day of January 2021.