

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44413
Docket No. MW-43354
21-3-NRAB-00003-200393**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

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

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier recouped from Welder Foreman J. Cardona compensation received in connection with his reporting to Las Cruces, New Mexico for leadership and pre-startup training and work beginning on January 2, 2014 prior to the scheduled January 6, 2014 gang start-up date of Gang TRWX0017 (System File C-14-T075-10/10-14-0409 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, ‘... any cuts that have been made to the pay of Mr. Cardona be repaid and any planned cuts that have not been made be cancelled.’”**

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.

This is one of several claims filed by the Organization protesting the way in which employees who were required to report in advance of the start of their mobile production gang were compensated for the early start. (*See*, Third Division Award 44402.) In this Claim, Welder Foreman J. Cardona was instructed to report to his Region System Gang assignment on January 2, 2014, prior to the scheduled report date for Gang TRWX0017 of January 6, 2014.

The Carrier operates large mobile production gangs across its territory to perform major repair and replacement work that is programmed in advance. These production gangs may have more than thirty different positions and a commensurate number of employees. Operating these gangs safely and efficiently requires considerable coordination and preparation. In order to be ready to start when a gang reports for work at a new location, the Carrier routinely brings in key members of the gang early in order to prepare in advance, in what is called a Gang Start-Up Meeting. Some of the tasks performed in advance include inspecting equipment, reviewing gang members' qualifications, ensuring vehicles have proper documentation, preparing medical emergency forms, ordering supplies, and similar items.

The parties have negotiated provisions for travel costs, meals and lodging for employees who are required to work away from home in Rule 38 of their Agreement. Section I addresses Mobile Headquarters (With or Without Outfit Cars)—Lodging—Meals. Section II addresses Week-End Travel Allowance. Rule 35 addresses Travel Time: “G. (1) Employees filling relief assignments or performing extra or temporary service will be paid for travel and waiting time as follows: [text omitted]”

Payroll records establish that the Claimant was paid for his travel time and mileage pursuant to Rule 38.H. The Organization contends that he should have been paid under Rule 35: he was reporting for Leadership Training, which was “extra or temporary service,” not part of his routine job duties. The Carrier acknowledges that the Claimant was required to report early for the new gang, but contends that such early reporting is common and the travel routinely compensated as regular one-way gang startup travel. The record includes statements from a number of managers attesting to the routine start-up tasks that gang members who report early perform

and to the fact that early reporting has been compensated as regular work in the past, not as extra or temporary service.

In Third Division Award 44402, the Board held that the burden is on the Organization to establish that Claimants are engaged in Leadership Training when they are required to report early, as that would be “extra or temporary service” compensable under Rule 35.G(1), and the Board sees no reason to deviate from that Award. The record here does not establish that Leadership Training was all or even a significant part of what the Claimant did when he reported early. The Carrier keeps records of the time employees spend in training. The Claimant’s payroll records show that during the period in dispute, he was paid for regular work (Pay Code 01) and not for any training (Pay Code 06).

Ultimately, the record fails to support the Organization’s position that the Claimant was engaged in Leadership Training when he was required to report early prior to the start of Gang RP-05. Accordingly, the Carrier did not violate the Agreement when it compensated his travel as regular one-way gang startup travel pursuant to Rule 38.H.

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 13th day of April 2021.