

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44499
Docket No. MW-45970
21-3-NRAB-00003-200544**

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 recouped a weekend travel allowance payment from Mr. B. Juarez by cut letter issued in February 2019 (System File 2417-SLA22-I 97/14-19-0146 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Juarez must be paid the travel allowance payment he was denied from receiving by the Carrier as settlement. In addition, the Carrier must reinstate the ability of employees to claim their Travel Allowance through the regular payroll process.”**

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.

Factual Background

The Claimant was approved for Article XIV Travel Allowance, then the approval was rescinded by the Carrier by way of a cut letter issued on January 25, 2019.

Applicable provisions of the parties' Agreement state as follows in pertinent part:

For the sole purpose of simplifying the filing for travel allowance benefits pursuant to Article XIV of the 1996 National Agreement on Burlington Northern Santa Fe Railway Company (BNSF), the parties agree to the following: * * *

6. For round trips in excess of 500 miles, a valid receipt for each trip claimed must accompany the Article XIV Travel Allowance benefit form in addition to employee certification on that form that claimed trips were actually made. * * *

8. Under this Agreement, a valid receipt is defined as either an original bonafide business machine printed receipt for a purchase, or an original bonafide business machine printed business transaction record, either of which must be a record of a transaction consummated by the employee at his/her home residence location over the claimed rest day trip home. Acceptable valid receipts must legibly contain the name of the business from which secured, the employee's home residence city name, and the date of the purchase or business transaction. The date on the valid receipt must coincide with the date of the claimed weekend trip home. If the valid receipt contains bank account numbers or credit card numbers, those numbers may be blacked out so long as the remainder of the required information remains legible. * * *

10. Article XIV Travel Allowance benefit forms must be filed promptly with the appropriate supervisor or other designated authority upon the employees return to the gang following the rest day trip home.

Position of Organization

The Carrier notified the Claimant that it would deduct \$149.40 in compensation previously paid for a weekend travel trip. The Carrier asserted that the deduction was connected to a weekend travel allowance payment for a work date of December 27, 2018. However, in the Organization's assessment, the Carrier never provided any reasonable justification or evidence to support this action. In its view, the provisions of the Agreement simply do not allow the Carrier to unilaterally recoup the travel allowance payment from the Claimant's paycheck as it did in this case.

Position of Carrier

The Carrier argues that the history of the travel allowance provision provides insight and support for its position. The significance of the 1996 National Agreement is that it contains Article XIV-Travel Allowance, which provides employees assigned to mobile (non-headquartered) positions a payment of \$25.00 per 100 miles traveled from the work location to their residence and back to the work location (and additional \$25.00 payments for each 100 mile increments) by the most direct highway route. In March 2012, BNSF and BMWED negotiated an addendum to the 2012 National Agreement. Section 6 of the Addendum increased the WTA amount from \$25.00/100 miles to \$28.00/100 miles.

The WTA Agreement has since been incorporated into Appendix No. 22 of the ATSF/BMWED Agreement. In 2001, the parties agreed to a semi-automated process where the timekeeping system would calculate the miles using the employees' residence zip code on file with the Company and the lodging zip code entered by the foreman.

In the Carrier's view, BMWED continues to assert, without any evidence, that non-compliant WTA forms and receipts were given to the exempt Supervisor, which is incorrect. The forms and any applicable receipts are given to the gang foreman, who is a scheduled employee represented by BMWED.

The Carrier notes that the Board has already held that BNSF has the right to recover the payments, and prefers that BNSF take that course rather than dismiss employees for what appears to be fraud, but could be, in some instances, a simple mistake. BNSF changed its handling to mirror the Board's directive, which works in favor of the affected employees, since there have been instances where noncompliant

employees have contacted BNSF's Engineering Timekeeping and provided valid receipts. In those instances, the monies were returned to the employees.

Analysis

The WTA payments at issue here were based on the submission of the Claimant's Article XIV Travel Allowance benefit forms. It was upon review of these forms that Engineering Timekeeping auditors determined the Claimant had failed to submit his form with the required receipt. The Claimant did not meet all the criteria specified in Item 8 of the WTA Agreement.

It is critically significant that the receipt was missing in this case. The cases cited in support of the Organization's position involve the question of whether the submitted receipt was original. They do not serve as precedent in the instant matter, where no receipt has been submitted at all. It is not reasonable to expect the Carrier to pay a travel allowance for expenses without a receipt. The Organization has not met its burden of establishing a contract breach in this instance.

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 29th day of July 2021.