

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44501
Docket No. MW-46059
21-3-NRAB-00003-200237

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

(Brotherhood of Maintenance of Way Employes 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 from Messrs. M. Bennett and D. Kabetske a Rule 3 7 travel time payment on November 11, 2018 in connection with the use of their personal vehicles to report to and return from company training (System File 493-SL37- 18206/ 14-19-004 7 BNS).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Bennett and D. Kabetske shall now be provided travel time and mileage for using their personal vehicles to attend this required training.”

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:

On September 9 and 21, 2018, the Claimants were instructed to attend Carrier-mandated training at Johnson County Community College in Overland Park, Kansas. This required them to detach from one work location and report to another using their personal vehicles. The Claimants were initially compensated with travel pay and mileage amounts. However, the Carrier subsequently issued a cut letters and, on November 11, 2018, payments that had already been made to the Claimants for mileage and travel time were recouped from their paychecks.

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

RULE 37 - TRAVEL TIME AND MILEAGE EXPENSE

37(a) - Employees Assigned Outfit Cars, Etc., Who Are Traveling From One Work Point to Another. Employees who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in outfit cars, highway trailers, campers, hotels or motels, shall be paid for time spent in traveling from one work point to another. The Carrier will designate the mode of transportation to be used for movement from one work point to another work point. Each employe involved in such a move outside of regularly assigned hours or on rest days or holidays, and including those employes who may go to their respective homes over a weekend or holiday, if the mode of transportation designated by the Carrier is: (1) by rail or air, will be allowed the actual time elapsing between departure and arrival of the transportation designated at straight time rate, or "(2) by means of any mode of highway transportation, will be paid travel time on the basis of time computed at the rate of 1.5 minutes per mile [forty (40) miles per hour] via the most direct highway route between the two points. (3) If Carrier does not provide a mode of transportation either by rail or highway, and authorizes certain employe(s) to use personal automotive transportation, and such authorized employe(s) is willing to use his vehicle for such transportation, such designated employe(s) will be allowed the Company authorized mileage allowance per mile in addition to travel time allowance, computed as indicated in Item (2) above. There shall be no waiting time allowances based on movement of outfit cars.

37(b) - Employes Performing Detached Service. Employes who are required in the course of their employment to be away from their regular assignment or headquarters point as designated by the Company, including employes filling relief assignment or performing extra or temporary service, shall be compensated as follows: while working, according to rules for regular assignment, with not less than eight hours each day. When waiting they shall receive straight time, except that no time will be allowed between 10:00 p.m. and 7:00 a.m. when sleeping accommodations are furnished and an opportunity for five hours or more sleep is afforded. When traveling they shall be paid in accordance with Rule 37-(a), except as set forth in Rules 37(c) and 37(e). After arriving at point where work is to be performed, and in the event that work is not completed and will be resumed the following day, and if sleeping accommodations are available, time outside of regular working period hours not actually worked will not be considered as waiting or paid for under this rule. * * *

37(d) - Free Transportation. Except as set forth in Rule 37-(f), an employe in detached service shall be furnished with free transportation by the Company in traveling between the assembly point of his regular assignment to another point and return, or from one point to another. If such transportation is not furnished, he will be reimbursed for the cost of rail fare if he travels on other rail lines, if he has an automobile which he is willing to use and the Company authorizes him to use said automobile, he will be paid the Company authorized mileage allowance for each mile in traveling between the assembly point of his regular assignment to the work point, and return, or from one work point to another. “* * *

37(g) - Authorized Use of Personal Vehicles. Employes who are authorized to utilize their personal vehicles will be allowed the Company authorized mileage allowance.

Position of the Organization

As the Organization sees it, the Carrier's recoupment of the mileage and travel time payment after it was approved was not permitted by the Agreement. It views this action as a violation of Rule 37. It refers to Third Division Awards 40215

(BNR), 42971 (BNR), 42979 (BNR) and Award 67 of Public Law Board (PLB) No. 4768 (BNR) in support of its position.

Position of the Carrier

In the Carrier's view, the Claimants traveled on September 9 and 21, 2108 between their residences and the training facility at the Johnson County Community College to attend mutually beneficial welder training. The Claimants chose to participate in this training in order to continue their eligibility for assignment to higher paying welding positions. They could have chosen not to attend this supplemental training and placed themselves on other types of assignments. However, they elected to accept BNSF's offer of training provided at the Company's expense in order to retain their welding qualifications.

The Carrier notes that the Claimant Bennet completed the welder training on Friday, September 21, 2018 and traveled home from the training site at JCCC in Lenexa, Kansas to his residence in Nixa, Missouri. This was a trip, by the most direct highway route, of only 189 miles. However, the Claimant Bennet submitted a claim for travel time and mileage, not to the actual location he traveled that day, but to Wilson, Arkansas, which would have been a trip of approximately 474 miles. Timekeeping properly adjusted the Claimant Bennet's claimed travel time and mileage to reflect his trip home. Because the Claimant Bennett was released from class four hours early on Friday, those hours were credited towards his actual travel time that day.

The Carrier maintains that it was following decades of past practice regarding travel expenses for mutually beneficial training.

The Carrier points out that the Claimant Kabatske was attending the same welding training in Lenexa, Kansas. He submitted travel time and mileage based upon work points in Cape Girardeau, Missouri (approximately 453 miles) and Wilson, Arkansas (approximately 457 miles), not the actual trips he made from and to his residence in Republic, Missouri (180 miles). The claim for travel time and mileage was adjusted to reflect the actual trips the Claimant Kabatske made. Because the Claimant Kabatske was also released from class four hours early on Friday, September 21, 2018, four hours of the eight hours of straight time he received that day was credited towards his travel home.

In the assessment of the Carrier, Rule 37(a) does not apply in this instance because the Claimants were not traveling between work points. They were traveling from their residences to participate in training, which is not work or service.

Analysis

The employees in this case were attending mutually beneficial training as opposed to mandated training. BNSF practice, supported multiple Board decisions, has been to decline application of Rule 37 in such circumstances. The Board lacks an adequate evidentiary basis for finding that the Carrier has violated the Agreement in this case.

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.