

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44527
Docket No. MW-44360
22-3-NRAB-00003-210215**

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 compensation previously issued to Messrs. J. Rodriguez, S. Thompson, C. Chavez, K. Inkelaar, M. McCabe and T. Ebright in connection with their attending Leadership training prior to the February 10, 2014 scheduled gang start-up date of RSG Gang TCGX 0002 (System File T-D-4578-M/11-15-0201 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Rodriguez, S. Thompson, C. Chavez, K. Inkelaar, M. McCabe and T. Ebright shall each be compensated' ... for what he is owed for his trips on February 3, 2014 and February 7, 2014, (may include Feb 2 - 8) less the monies that the Carrier has already paid the claimant, incorrectly. * * ***

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.

In or around late 2013, the Claimants exercised their seniority and were assigned to various positions on RSG Gang TCGX 0002 with a scheduled start date of February 10, 2014. Prior to the scheduled start-up, the Carrier instructed the Claimants to report on February 3, 2014.

The parties' Agreement states as follows in pertinent part:

ARTICLE XIV - TRAVEL ALLOWANCE

Section 1

(a) At the beginning of the work season employees are required to travel from their homes to the initial reporting location, and at the end of the season they will return home. This location could be hundreds of miles from their residences. During the work season the carriers' service may place them hundreds of miles away from home at the end of each work week. Accordingly, the carriers will pay each employee a minimum travel allowance as follows for all miles actually traveled by the most direct highway route for each round trip:

0 to 100 miles	\$ 0.00
101 to 200 miles	\$25.00
201 to 300 miles	\$50.00
301 to 400 miles	\$75.00
401 to 500 miles	\$100.00

Additional \$25.00 payments for each 100 mile increments.

- (b) At the start up and break up of a gang, an allowance will be paid after 50 miles, with a payment of \$12.50 for the mileage between 51 and 100 miles.
- (c) Carriers may provide bus transportation for employees to their home area on weekends. Employees need not elect this option.

RULE 35. TRAVEL TIME * * *

- B. An employee who is not furnished means of transportation by the Company from one work point to another and who uses other forms of transportation for this purpose shall be reimbursed for the cost of such transportation. If he uses his personal automobile for this purpose in the absence of transportation furnished by the Company, he shall be reimbursed for such use of his automobile on a mileage basis consistent with Company policy but not less than fifteen (15) cents a mile for the mileage from one work point to another. * * ***
- G. (1) Employees filling relief assignments or performing extra or temporary service will be paid for travel and waiting time as follows:**
- (2) If the time consumed in actual travel, including waiting time enroute, from the headquarters point to the work location, together with necessary time spent waiting for the employee's shift to start, exceeds one (1) hour, or if on completion of his shift necessary time spent waiting for transportation plus the time of travel, including waiting time enroute, necessary to return to his headquarters point or to the next work location exceeds one (1) hours, then the excess over one (1) hour in each case shall be paid for as working time at the straight time rate of the job to which traveled. When employees are traveling by private automobile time shall be computed at the rate of two (2) minutes per mile traveled.**

Position of Organization:

In the Organization's view, the Claimants performed extra work and should be compensated for their travel time and mileage. In accordance with the clear language of Rule 35B and Rule 35G, the Claimants were entitled to be compensated for mileage and travel time incurred at the rate of two (2) minutes per mile traveled for the time incurred while traveling by private automobile to and from the training/preparation site. The Organization notes that the Claimants were originally compensated pursuant to Rule 35. However, the Carrier notified them that their pay would be recovered (cut) from their paychecks. The Carrier's allegedly improper recovery of said money began on October 15, 2014.

Position of Carrier:

The Carrier defended against the claim by asserting that the Claimants were merely reporting for the "start-up" of the gang. As the Carrier sees it, the Claimants were exercising seniority, meaning Rule 35(F) prohibits payment of the travel time at issue. In the Carrier's assessment, the Organization's citation to Public Law Board No. 4768 Awards 23, 31 and 67 does not control because those cases dealt with employees traveling to the Technical Training Center to enhance or develop their skills.

The Carrier further argues that the employee statements, which assert they had received such payments in the past, are not persuasive because the past payments do not constitute a new rule and also because new, sophisticated computer programs might have uncovered the incorrect payments.

Analysis

The parties are not in disagreement as to the applicable standard. Both parties understand that when employees travel to and from training designed to enhance their skills, such as is offered at the Technical Training School, they qualify for mileage and travel time. When they are simply traveling to and from their regular assignment for an early preparative start, they do not qualify for such pay. The question to be determined, then, is whether in this instance, the Claimants qualified for the higher compensation.

It is well established that the Organization bears the burden of establishing that the reason for the travel was skills enhancement training as opposed to early gang start-up. Awards 44402, 44413 and 44420 are clear on this point. Precedent should be followed. The question is whether the Organization has provided adequate evidence to support its contentions.

The Organization did provide employee statements. Todd Ebright stated as follows:

During the week we were called down early we did classroom training as well as field training. Classroom training consisted of videos on how to operate TLM, safety awareness of the TLM , and how the TLM operated. Training also included field training assembling and disassembling of the TLM, helping out operators who were not familiar with the machines that they were operating, maintaining, and servicing.

We were showed the field plan (layout) of the projects that were going to take place the following week when the remainder of the gang started up.

John Mozinski, Jr. wrote a memo stating he reported early for four days of classroom training.

It makes sense that before going to the field to practice machine operation, employees would watch videos about it. Reading the employee statements together, employees spent time in a classroom learning about the machines they would be operating on their assignment, then went to the field to practice what they had learned. This is consistent with preparation for an assignment as opposed to training which is not directly tied to competent performance of the regular assignment. In the event there was both training and work, then the categorization of the time remains work, and the early arrival of an employee remains an exercise of seniority. At the most, the Organization has shown a mix, as opposed to skills enhancement training not directly related to an assignment.

The Carrier does not deny that the Claimants were instructed to report prior to scheduled gang start-up. It has provided statements from 17 different supervisors showing that the practice has been to apply Rule 35(F) when employees report early. This is consistent with and supportive of the Carrier's argument that key positions were called in for early report in order to perform preparation work for the assignment.

Third Division Award 40215 stated in part: "In sum, the Board concludes that Awards 23 and 31 determined that travel pay was available to employees involved in traveling to and from Company-directed training programs." As with the instant case, Award 40215 involved 'Leadership Training' scheduled the week before start up. However, in that case, employees' time entries were for "formal training." The claim was sustained.

The question is not whether the training took place at the Technical Training Center, but whether it was in preparation for performance of a regular assignment. No other employee described training inconsistent with Ebright's more detailed description. Time spent verifying the ability to properly operate equipment to be used in an assignment is inseparable from that assignment. In this case, the Board is persuaded that the training offered the Claimants was in direct preparation for the performance of regularly assigned duties. When employees traveled to this training, they were exercising their seniority regarding the regularly assigned work.

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 8th day of October 2021.