

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44528  
Docket No. MW-44361  
22-3-NRAB-00003-210213**

**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 failed and refused to compensate employes M. Sanders, L. McKinnon, A. McGannon, R. Darrow, K. Lyons, M. Smith, W. Monarez, P. Bearden, J. Giraldin, M. Chavez and B. Williams for travel time and mileage for attending formal training prior to the January 19, 2015 scheduled gang start-up date for Regional System Gangs TCGX0007, TRWX0087 and TSCX0087 (System File 30-BN35-151/14-15-0199 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Sanders, L. McKinnon, A. McGannon, R. Darrow, K. Lyons, M. Smith, W. Monarez, P. Bearden, J. Giraldin, M. Chavez and B. Williams shall now each be made whole for the payments of mileage and travel time that were improperly disallowed by the Carrier.”**

**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.

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 Sunday, January 11, 2015, the Claimants were instructed by the Carrier to report for Leadership Training prior to the January 19, 2015 scheduled bulletin start-up of Regional System Gangs TCGX0007, TRWX0087 and TSCX0087. They were required to report to the Holiday Inn Hotel located in Everett, Washington to attend training classes. The Claimants used their personal vehicles to travel from their personal residences to Everett, Washington then to return to their residences on Friday, January 16.

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.

- F. Employees will not be allowed time while traveling in the exercise of seniority, or between their homes and designated assembling points, or for other personal reasons.

**Position of Organization:**

As the Organization sees it, the clear language of Rules 35B and 350 requires the Claimants to be compensated for mileage and travel time incurred at the rate of two minutes per mile traveled for the time incurred while traveling by private automobile to and from the training/preparation in Everett, Washington. Importantly, this issue has previously been addressed and put to rest by this Board in Third Division Award 40215 and Award 67 of Public Law Board (PLB) No. 4768.

Rule 35G provides that employees filling relief assignments or performing extra or temporary service will be paid for travel and waiting time, and that when employees are traveling by private automobile, time shall be computed at the rate of two (2) minutes per mile traveled. Each of the Claimants performed extra work at the direction of the Carrier and since they utilized their private automobiles, they were entitled to receive mileage and travel time.

**Position of Carrier:**

As the Carrier sees it, the Claimants were exercising seniority, meaning Rule 35(F) expressly prohibits payment of the travel time at issue. The Claimants were merely reporting (exercising seniority) to their regional system gang assignments. 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.

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, 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, hence the question is whether the Organization has provided adequate evidence to support its contentions. In the event there was a mix of training and work, then the categorization of the time remains work, and the early arrival of an employee remains an exercise of seniority.

The Carrier does not deny that the Claimants were instructed to report as alleged, prior to scheduled gang start-up of January 19, 2015. It has provided documentation that shows the Claimants as “regular scheduled” on January 11, and also shows a number of them had a gang startup date of January 12. 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 of eligibility for travel pay demands an evaluation of the evidence offered in support of the existence and nature of the alleged training. In this case, the pay code used for the dates of January 12-16, 2015 was “regular scheduled.” This fact distinguishes the instant case from Award 40215 where the pay code was ‘formal training.’ In the absence of evidence to the contrary, this ‘regular scheduled’ pay code affirms the Carrier’s assertion that the Claimants were traveling in the exercise of their seniority. We are persuaded that the Carrier simply gave certain, essential employees an earlier start date to report for their assigned work.

There is no dispute that the start-up date for the gang was a week later. However, the Organization has provided no persuasive evidence that the Claimants were arriving early to do anything other than perform preparation work involved in their regularly assigned work. The evidence of record fails to provide an adequate basis for concluding that the Claimants qualified for the claimed 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 8th day of October 2021.**