

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44531
Docket No. MW-43867
22-3-NRAB-00003-210216**

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 refused to compensate Mr. B. Brandewie for travel time and mileage for attending Leadership Training prior to the February 2, 2015 scheduled gang startup date for Regional System Gang TP-04 (System File B-M-2854-E/11-15-0394 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Brandewie must be paid' ... for what they are owed for their trips on January 26, 2015 and January 30, 2015, (may include days before and after depending on distance) less the monies that the Carrier has already paid the claimant, incorrectly. Or any additional money the carrier removed as a result of this extra leadership 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:

Beginning on January 26, 2015 through January 30, 2015, Claimant was instructed by the Carrier to report for Leadership Training prior to the February 2, 2015 scheduled bulletin start-up of Regional System Gang TP04. The record confirms that Claimant used his personal vehicle to make the trip. The Carrier initially compensated Claimant for his travel time and mileage. Several weeks later the Carrier issued "cut letters" which informed him that the Carrier believed the payments had been in error and that the money would be recouped. The Carrier ultimately recovered the claimed travel time and mileage reimbursement payments. It is the travel time and mileage reimbursement payments which are at issue in this case.

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:

The Organization maintains that the clear language of Rules 35B and 350 requires Claimants 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. It believes 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. Claimant performed extra work at the direction of the Carrier and since they utilized their private automobiles, they were entitled to receive mileage

Position of Carrier:

As the Carrier sees it, Claimant was exercising seniority, meaning Rule 35(F) prohibits payment of travel time for employees traveling for this reason. In the Carrier's assessment, Claimant was merely reporting to his regional system gang assignment. 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. 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 before the Board is whether the Organization has provided adequate evidence to support a conclusion that Claimants underwent formal training as opposed to being called in for early start-up. In the event there was some training and some work, then the categorization of the time remains work, and the early arrival of an employee remains an exercise of seniority.

In Public Law Board 4768, Award 23, the Board determined that Claimant was traveling at the direction of the Company, and therefore Rule 35A applied. Award 31 of the Law Board found that all terms of Rule 35 applied. Award 40215 followed this precedent in a case which involved Leadership Training scheduled the week before start up. It noted employees' time entries were for "formal training." The claim was sustained.

The above-cited precedent is distinguishable from the instant matter in that no records have been provided to establish that the pay code used for Claimants was

“formal training.” The Carrier maintains it 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 evidence that Claimant arrived early to do anything other than perform preparation for regularly assigned work. There is no employee statement or other document which supports a conclusion to the contrary. It follows that the Board must conclude that the Organization has not met its burden of proof.

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.