

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44546
Docket No. SG-46189
22-3-NRAB-00003-200610**

The Third Division consisted of the regular members and in addition Referee Joseph Fagnani when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of R. Black, Jr. and A.B. Lieto, for mileage incurred driving their personal vehicle, account Carrier violated the current Signalman's Agreement, particularly Uniform Rules 8, and 13, when it did not provide them transportation and didn't pay them mileage on November 30, 2018 and January 18, 2019 respectively when the Claimants used their personal vehicles to respond to overtime calls. Carrier's File No. 19-35863. General Chairman's File No. 19-06- PM. BRS File Case No. 16197-C&O(CD). NMB Code No. 37.”

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 Claimants in the instant care were assigned to the Carrier's Communication Department and on the subject dates, the Claimants utilized their personal vehicles in the performance of their duties. The Organization posits that as a result of being

“forced” to use their personal vehicles, the Claimants are entitled to be reimbursed for mileage expenses, citing Rule 8(b) and Rule 13(b) in support of its position. The cited rules read as follows:

UNIFORM RULE 8 – OVERTIME CALL RULE

- b) Employees called after release from duty to perform service outside of regular tour of duty shall be paid at the applicable overtime rate with a minimum of three (3) hours at the time and one-half rate. Time of employees called will begin at the time called and will end upon return to the point at which called (residence or motel).

UNIFORM RULE 13 – TOOLS AND PPE

- b) The Carrier will furnish the employees with all tools and equipment necessary to safely perform their work. When tools become worn to the extent they are unsafe, the Carrier will furnish appropriate replacements. Employees will be held responsible for the proper use and care of tools furnished by the railroad, and when they leave the service of the railroad, will turn over to their supervisor all tools furnished them by the railroad.

The crux of the Organization’s position is that the Carrier failed to provide the “tool and equipment necessary to safely perform their work”, characterizing a fully equipped company truck as part of the necessary equipment required under Rule 13(b). The Organization has also contended that the Claimants were not furnished the necessary tools to perform their duties.

The Carrier asserts that the Organization has failed to sustain its burden of proof and has submitted no evidence that the Claimants were “forced” to use their personal vehicles or that the Claimants were not properly supplied with the necessary tools to complete their work assignments. The Carrier submits that there is no rule in the applicable agreement that provides for mileage expense reimbursement under the circumstances involved herein.

Upon its review of the record, the Board finds that there is nothing in the record to indicate that the Claimants were not properly compensated for their overtime service as provided in Rule 8(b), i.e., from the time called to their return to the point

of call. Relative to Rule 13, the Board notes that the title of the rule is “Tools and PPE”, with PPE referring to Personal Protective Equipment. There is nothing in the rule, either stated or implied, which identifies a vehicle as the “equipment” indicated in the rule. Also, the Organization has failed to state with any specificity what other tools the Claimants were not supplied, and, accordingly, the Board has not considered that contention.

Of paramount importance, however, is the fact that the Organization has failed to cite any rule of the Agreement which provides for mileage reimbursement when an employee uses his own personal vehicle in the performance of his duties. The Organization, as the moving party, has the burden of proving all elements of its claim and an integral part of such proof is a showing that a rule of the controlling agreement has been violated. Under such circumstances, the Board has no recourse but to deny the claim.

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.