

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44636
Docket No. MW-44253
22-3-NRAB-00003-210225**

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (Former Burlington Northern
(Railroad)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to properly compensate and reimburse Mr. A. Hantho in connection with his travel from new hire training in Gillette, Wyoming to report to work on Gang RP12 at Kelso, Washington between May 22, 2015 and May 26, 2015 (System File S-P-2023-G/11-16-0114 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Hantho shall ‘... be allowed 38.5 hours, 1155 miles paid at the current government rate and all benefits that the claimant did not receive because of these violations.’”**

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 hired Claimant Hantho as a new employee in Seniority District 100 on May 4, 2015. He attended the required new hire training in Gillette, WY, completed the training on May 22, 2015 and thereafter was required to travel 1,155 miles in his privately-owned vehicle (POV) to a temporary assignment on Gang RP12 in Kelso, WA. The assignment began on May 26, 2015. Roadmaster T. Highland signed and authorized the Claimant's "Pay Shortage Form" for the time and mileage associated with the travel from Gillette, WY to Kelso, WA, but the Carrier denied the request resulting in the timely filed and properly processed claim noted above. After the parties did not resolve the claim on the property, it was progressed to this Board for final and binding adjudication.

The Organization relies on Rules 35.B. and 35.G. as well as Third Division Award 40215 and Public Law Board 4768 Awards 23, 31 and 67. Rule 9 does not apply because there is no evidence that the Claimant was furloughed, recalled or worked a relief assignment. There is no dispute that the Claimant attended mandatory training and then drove his POV to Kelso, WA and that his request for time and mileage for the drive was initially approved.

The Carrier insists that the Organization has failed to meet its burden of proof, relying on Rules 35.F. and 35.G (2), contending initially that the Claimant was recalled to a Sectionman position on Gang RP12. Therefore, this case involves an exercise of seniority. Thereafter, the Claimant is said to have relieved a different Sectionman in the same Gang at the same location, traveling under one (1) hour, which makes Rule 9 inapplicable. The Organization's awards are seen as irrelevant. Furthermore, because this case involves a factual dispute, the claim must be denied or dismissed. Additionally, the claimed damages are excessive and/or punitive.

This Board has carefully considered the record and finds that the Organization has not met the required 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 15th day of December 2021.