

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44639
Docket No. MW-44310
22-3-NRAB-00003-210226**

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 instructed various employees assigned to Regional System Gangs TP02 and SC02 to report for duty to perform extra or temporary service on January 2, 3, 4, 8, 9 and 10, 2016 and then refused to compensate them for travel time and mileage from their respective residences to Houma, Louisiana back to their respective residences (System File C-16-T075-4/10-16-0137 BNR).**
- (2) The Agreement was violated when the Carrier instructed various employees assigned to Regional System Gangs TP04 and SC04 to report for duty to perform extra or temporary service on January 2 and 3, 2016 and then refused to compensate them for travel time and mileage from their respective residences to Lubbock, Texas (System File C-16-T075-6/10-16-0139).**
- (3) The Agreement was violated when the Carrier instructed various employees assigned to Regional System Gangs UC08 and SC58 to report for duty to perform extra or temporary service on January 2 and 3, 2016 and then refused to compensate them for travel time and mileage from their respective residences to College Station, Texas (System File C-16-T075-5/10-16-0138).**

- (4) As a consequence of the violation referred to in Part (1) above, Claimants J. Kelly, J. Navarrete, P. McEntee, J. Six, M. Luther, S. Interrial, J. Reidner, J. Gooch, S. Douglas, R. Tutor, B. West, A. Villarreal and M. Laucamp shall ‘... be paid their Travel Time computed at the rate of two (2) minutes per mile, as well as, their personal vehicle mileage at the rate of (\$.54) per mile for the travel that they incurred from their respective residences to Houma Louisiana (sic) and then from Houma Louisiana (sic) back to their respective residences as listed above, at their respective rates of pay, as settlement of this claim.’
- (5) As a consequence of the violation referred to in Part (2) above, Claimants T. Hainer, J. Mitchell, A. Strangland, M. Larson, I. Gilpin, A. Landers, V. Parkinson, C. Orteza and F. Abeyta shall ‘... be paid their Travel Time computed at the rate of two (2) minutes per mile, as well as, their personal vehicle mileage at the rate of (\$.54) per mile for the travel that they incurred from their respective residences to Lubbock, Texas, at their respective rates of pay, as settlement of this claim.’
- (6) As a consequence of the violation referred to in Part (6) above, Claimants L. Teniente, J. Rodriguez, W. Cole, W. Haynes and M Walker shall ‘... be paid their Travel Time computed at the rate of two (2) minutes per mile, as well as, their personal vehicle mileage at the rate of (\$.54) per mile for the travel that they incurred from their respective residences to College Station, Texas, as their respective rates of pay as settlement of this claim.’”

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 listed in the three above-noted claims drove their personally-owned vehicles (POVs) to the three cities noted above for training that took place prior to the bulletined start-up date of each of the three gangs. The Carrier refused to compensate them for travel time and mileage, resulting in the three timely filed and properly processed claims set forth above. None of the claims were resolved on the property; therefore, all were progressed to this Board and consolidated for final and binding adjudication.

The Organization essentially relies on Rules 35.B. and 35.G., said to have been violated. The Claimants were ordered to report for early Leadership Training, characterized as extra or temporary service, and used their POVs for all necessary travel. The Organization believes that reviewing expectations is a form of training. Not all of these Gangs were required to report and no work was performed during the training, which occurred prior to the bulletined start-up dates of the respective Gangs. Prior on-property awards, particularly Third Division Award No. 40215, support the Organization.

The Carrier finds Rule 35.F applicable because the Claimants were exercising their seniority. Reporting early to review expectations is not a relief, extra or temporary assignment. The Organization has not proven a violation. Third Division Award No. 40215 applied to formal training and is inapplicable. Claimants traveled from their residences and not from an assigned work point. Statements in the record show that one-way pay for early start-up in addition to normal weekend round trip pay has been the practice. Ultimately, the claim involves an irreconcilable factual dispute so that the claim must be dismissed or denied. The Claimants were all fully employed with no loss of earnings and no proof of damages; therefore, any damages awarded would be excessive.

The Board, finding no irreconcilable factual dispute, considers these consolidated claims. The context for that consideration is Rule 35 Travel Time, set forth below in relevant part. Also critical to the Board's consideration is on-property Third Division Award 40215.

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 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 from one work point to another.**
- 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.**
- 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 en route, 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 (sic), 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.**

The Organization relies on five (5) on-property awards. The seemingly seminal awards, PLB 4768, Awards 23 and 31 both dated November 21, 1991, sustained Rule 35 claims involving travel to and from a Technical Training Center for formal welder training. PLB 4768, Award 67, issued in 1995, again sustained a Rule 35 claim for travel to and from formal welder training. Third Division Award 32295, issued in 1997 did not indicate consideration of the earlier PLB 4768 awards, but also sustained a claim based on travel to and from a two-week formal welding class. Clearly, each of these awards involved travel to and from a formal training class.

Third Division award 40215, issued in 2009 sustained a Rule 35 claim for six (6) Claimants who were ordered to attend a one-week leadership training class prior to the bulletined start-up date of a gang for which the Claimants had apparently exercised their seniority. That claim was also sustained, with that Board's written analysis confined to the following paragraph:

The Board carefully reviewed the evidence. There is no compelling reason to depart from the logic and reasoning of the above-cited language of Public Law Board 4768, Award 67 and the Awards cited therein. The claimants were participating in a Company training program held one week prior to the bulletined start-up of the gang used private automobiles to arrive. The Claimant time entries were for "FORMAL TRAINING."

This Board observes that Award 40215 gives no indication of the nature of the evidence reviewed, but may have expanded the nature of training that results in compensation for travel. Neither a dissent nor a concurrence accompanied the award.

The latest in the string of on-property awards, Third Division Award 43951, dated March 3, 2020, involves a claim on behalf of nine (9) Claimants who were, in the words of the claim, "required to attend training at Jasper, Alabama prior to the January 6, 2014 scheduled gang start-up date . . ." After summarizing the contentions of the parties and reviewing the evidence that centered on the tasks performed during the week prior to the gang start-up, that Board denied the claim, concluding that:

We find that the preparatory tasks described by the Carrier's statements to inextricably intertwined in the performance of the work itself. Loading, unloading, checking materials, maintaining equipment and updating forms and rule books are ongoing tasks which tend to be more concentrated on start-up. These tasks are not adequately distinctive to render the work "extra or temporary."

Like the previous award, no dissenting or concurring opinions were attached.

It should now be clear that the question this Board must answer is, "Which line of analysis does the evidence in the record before us support? The record includes statements from most of the Claimants who traveled to Houma, LA. The statements establish that in the week prior to start-up there were classes in CPR/first-aid, gang expectations, PARS and track stability and, for at least part of the last day time spent

inventorying PPE, tools and supplies. Checking machinery was also indicated. The Carrier provided statements from at least five (5) ADMPs plus other officials who noted the past practice since at least 2000 of paying for one-way weekend travel for gang start-ups. In summary, statements also indicate that, depending on an employee's classification, activities during the week might include loading, moving and unloading equipment, vehicle and equipment maintenance, acquisition of supplies, taking inventory, obtaining fire protection devices, updating forms and rule books and more. The Carrier's uncontradicted evidence convinces this Board that any classroom orientation that might have taken place during the week was directly related to the work that the gang would be expected to perform in the weeks ahead and that the Claimants were involved in preparation outside of the classroom as well. For these reasons, we subscribe to the analysis set forth in Award 43951.

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.