

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45063
Docket No. MW-46643
24-3-NRAB-00003-210633**

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: (
(Keolis Commuter Services

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to allow Mr. D. Semler travel time compensation and mileage reimbursement in connection with the use of his personal vehicle for overtime work performed on various dates between August 24, 2019 through October 6, 2019 and continuing (System File S-1932K232/BMWE 35/2019 KLS).

(2) As a consequence of the violation referred to in Part (1) above, Claimant D. Semler shall now be properly compensated for all missed travel time and mileage compensation. This Claim is continuous and inclusive of all violations until the violation ceases to exist.”

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:

Rule 32, regarding Travel Time states as follows:

Except as otherwise provided, the following rule will apply to territories governed by the BMW Corporate Agreement.

1. An employee waiting, or traveling by direction of Amtrak by passenger train, motor car or any other method of transportation, will be allowed straight time for actual time waiting and/or traveling during or outside of the regularly assigned hours.
2. When authorized to use their personal vehicle, the employee will receive the standard Amtrak authorized mileage reimbursement.
3. This rule does not apply to employees waiting or traveling in the exercise of their seniority rights.

Position of Organization:

The Organization maintains the voluntary nature of the overtime in this instance in no way voids the Carrier's obligation to compensate members for travel time or mileage. It relies heavily on Award 43455 as precedent which should be followed in this case. In that case, the Board reasoned:

The Carrier relies on the words "by direction of MBCR" and says that it can deny the travel reimbursement to the Claimants because they were working on a voluntary basis. This Board disagrees. A review of that rule makes it clear that if the parties did not want it to apply to some cases, such as is pointed out in Paragraph 3, "in the exercise of their seniority rights," then the parties could have made another exception to that rule. The rule does not have an exception for cases where the overtime is voluntary. The Carrier argues that the words "by direction" make it clear that the rule only applies to work that is involuntary. This Board has reviewed the rule and disagrees.

Position of Carrier:

The Carrier denies any agreement to compensate Organization members for travel time or mileage when the employee is not explicitly directed by the Carrier to perform the overtime work in question. In its view, the plain language of the Agreement limits travel and mileage pay to situations where the Carrier affirmatively directs an Organization member to work, and that employee is authorized to utilize a personal vehicle to get to the location.

The Carrier did not direct Claimant to perform the overtime work for which he is seeking the pay and reimbursement contested here; it was voluntary. Carrier direction is a necessary predicate to any travel pay or mileage reimbursement and it does not exist here. The Meyers award cited by the Organization wrongfully modified the plain wording of the Agreement to create a brand new right never negotiated or contemplated by the parties. This award exceeded the authority granted to boards of adjustment in that it eliminated a necessary condition precedent to mileage and travel time. When an employee is working voluntarily, exercising his seniority rights beyond his scheduled hours at an elevated overtime rate, it is that employee's decision to do so.

Analysis:

The contract language here concerned has two points requiring interpretation. The first is whether the limitation of mileage and travel allowance to trips taken "by direction of" the employer applies to voluntary overtime. Awards have been issued both ways. One point of view is that the employee is voluntarily opting to take on the travel and therefore is not traveling "by direction of" the Carrier. The other interpretation is that the employee is traveling to a location selected by the Carrier and therefore must be deemed to be traveling "by direction of" the Carrier. We find the former reading to be the more accurate one. The employee, in agreeing to work the overtime, chooses to go where the work is located, and therefore agrees to go work there. The Carrier is not directing the employee to do so, since the employee has the option of declining the overtime for any reason, including a disinclination to engage in the travel.

The second aspect of the contract language in controversy is the language at the end of Rule 11 stating: "This rule does not apply to employees waiting or traveling in the exercise of their seniority rights." We find the acceptance of overtime to be an exercise of seniority rights. See Award 43619 and 43620 which held accepting overtime was an

exercise of seniority. Opportunities for overtime are offered in order of seniority, and a less senior employee has no right to an overtime opportunity taken by a more senior one. The senior employee has a seniority right to accept or decline the overtime and exercises that right upon acceptance of an overtime opportunity. It follows that there is an express exception to the right to travel allowance and mileage when the employee, in the exercise of seniority, opts to accept an overtime opportunity, thereby precluding less senior employees from working the time.

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 31st day of October 2023.