

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45238  
Docket No. MW-46492  
24-3-NRAB-00003-200726**

**The Third Division consisted of the regular members and in addition Referee Melinda Gordon 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 failed to properly compensate Mr. J. Nicholas for time spent waiting while detached from his regular assignment/headquarters on Friday, March 29, 2019, Saturday, March 30, 2019 and Sunday, March 31, 2019 (System File 2418-SL37-198/14-19-0205 BNS).**
- (2) The Agreement was violated when the Carrier failed to properly compensate Mr. R. Aldridge for time spent waiting while detached from his regular assignment/headquarters on Friday, March 29, 2019, Saturday, March 30, 2019 and Sunday, March 31, 2019 (System File 1600-SL37-199/14-19-0224).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant J. Nicholas shall now be paid ‘... thirty-seven (37) hours (7 hours Friday, 15 hours Saturday, 15 hours Sunday) straight-time waiting per Rule 37(b).’**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant R. Aldridge shall now be paid ‘... thirty-seven (37) hours (7 hours Friday, 15 hours Saturday, 15 hours Sunday) straight-time waiting per Rule 37(b).’”**

**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 Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated the parties' agreement by failing to compensate each Claimant thirty-seven (37) hours for time spent waiting while detached from Claimant's regular assignment/headquarters on March 29, 30 and 31, 2019. During the dates at issue, Claimants attended a welding course the Carrier gave at a Carrier training facility.

The Organization characterizes the training as a "Carrier mandated training" that Claimants were required to attend at the risk of losing their employment with the Carrier. The Organization contends that Claimants "were not provided transportation nor permitted to return to their headquartered locations on March 29, 2019, and their assigned rest days on March 30 and 31, 2019. Moreover, the Carrier failed to compensate Claimants for waiting while detached from their regular assignments on March 29, 30, and 31, 2019."

In contrast, the Carrier avers that Claimants voluntarily attended a two-week welding course to retain their eligibility for assignment to Carrier welding positions. The Carrier asserts that Claimants could have chosen not to participate in the welding program and placed themselves in other types of Carrier assignments. Further, the Carrier submits that each Claimant received training, transportation to the training, lodging at the training, reimbursement of meal expenses, and eight hours of compensation time for each day of attending the training.

The Organization and the Carrier submit that Rule 37(b) supports their respective positions. Rule 37(b) provides as follows:

#### **RULE 37 - TRAVEL TIME AND MILEAGE EXPENSE**

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**37(b) - Employees Performing Detached Service.** Employees who are required in the course of their employment to be away from their regular assignment or headquarters point as designated by the Company, including employees filling relief assignment or performing extra or temporary service, shall be compensated as follows: while working,

according to rules for regular assignment, with not less than eight hours each day. When waiting they shall receive straight time, except that no time will be allowed between 10:00 p.m. and 7:00 a.m. when sleeping accommodations are furnished and an opportunity for five hours or more sleep is afforded. When traveling they shall be paid in accordance with Rule 37-(a), except as set forth in Rules 37(c) and 37(e). After arriving at point where work is to be performed, and in the event that work is not completed and will be resumed the following day, and if sleeping accommodations are available, time outside of regular working period hours not actually worked will not be considered as waiting or paid for under this rule.”

The record lacks documentary evidence to support either party’s position. Time reports for Claimant Nichols demonstrate that the Carrier paid him for attending the training, traveling outside assigned hours, meals, and lodging from March 25, 2019, through April 7, 2019. Claimant Aldridge’s time report is indecipherable.

The Organization has failed to provide any documentation supporting their argument that the training was mandatory and therefore work as defined pursuant to Rule 37(b). The Board can not engage in conjecture, speculation, or conclusions regarding the evidence before it. Based on a review of the record, the Organization has failed to maintain 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 28<sup>th</sup> day of March 2024.