

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45393
Docket No. MW-47504
25-3-NRAB-00003-220684**

**The Third Division consisted of the regular members and in addition Referee
Diego Jesús Peña 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. C. Brogan travel time and mileage in connection with his regularly assigned schedule on multiple dates beginning on January 23, 2021 and continuing until the violation ceases to exist (System File S2132K-323/BMWE 32/2021 KLS)**
- (2) The Agreement was violated when the Carrier failed and refused to allow Mr. L Sanderson travel time and mileage in connection with work outside of his regularly assigned schedule on multiple dates beginning on December 12, 2020 and continuing until the violation ceases to exist (System File S2132K-322/BMWE 22/2021 KLS)**
- (3) The Agreement was violated when the Carrier failed and refused to allow Mr. J. Alther travel time and mileage in connection with work outside of his regularly assigned schedule on multiple dates beginning on November 15, 2020 and continuing until the violation ceases to exist (System File S2132K-321/BMWE 19/2021 KLS)**
- (4) As a consequence of the violation referred to in Part (1) above, Claimant C. Brogan shall now be *** properly compensated for all missed travel time compensation. Also, given the Carrier’s outright refusal to comply with the Agreement, the Organization requested that each Claimant be allowed an additional \$25.00 for each day of**

travel for which they are not properly compensated in accordance with Rule 32. This Claim is also continuous and inclusive of all violates until the violations cease to exist.***'

- (5) As a consequence of the violation referred to in Part (2) above, Claimant L. Sanderson shall now be *** properly compensated for all missed travel time compensation at his respective rate as well as mileage reimbursement. Moreover, given the Carrier's outright refusal to comply with the Agreement, the Organization requested that each Claimant be allowed an additional \$25.00 for each day of travel for which they are not properly compensated in accordance with Rule 32.*** This Claim is also continuous and inclusive of all violates until the violations cease to exist.***'
- (6) As a consequence of the violation referred to in Part (3) above, Claimant J. Alther shall now be *** properly compensated for all missed travel time compensation at his respective rate as well as mileage reimbursement. Moreover, given the Carrier's outright refusal to comply with the Agreement, the Organization requested that each Claimant be allowed an additional \$25.00 for each day of travel for which they are not properly compensated in accordance with Rule 32.*** This Claim is also continuous and inclusive of all violates until the violations cease 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

The Claimants, C. Brogan, L. Sanderson and J. Alther, are employees who have seniority within the Carrier's Maintenance of Way Department. Claimant Brogan works as an Assistant Foreman on a Monday through Friday schedule of 7:00 AM – 3:30 PM. Claimant Sanderson works as an Assistant Foreman Flagman out of Cobble Hill, Massachusetts on a Monday through Friday schedule from 7:00 AM – 3:30 PM. Claimant Alther works as an Assistant Foreman Flagman out of Readville, Massachusetts on a Monday through Friday schedule from 7:00 AM – 3:30 PM.

On the following dates, Claimant Brogan voluntarily agreed to work overtime: January 23, 30 and March 6 and 7, 2021. On the following dates, Claimant Sanderson voluntarily agreed to work overtime: December 12 and 13, 2020. On the following dates, Claimant Alther voluntarily agreed to work overtime: November 15, 17, 18, 23, 24, 25, 29, 30 and December 1, 2, 3, 7, 8, 9, 10, 15, 21, 22, 23, 28, 29 and 30, 2020. The Carrier denied the Claimants' request for travel time compensation and for mileage reimbursement.

Both Claimants seek travel time compensation their straight time rate of pay, as well as mileage reimbursement pursuant to Rule 32 of the parties' Agreement. Rule 32 states:

Except as other provided, the following rule will apply.

1. An employee waiting, or traveling by direction of MBCR (Keolis) 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 MBCR/IRS authorized mileage reimbursement.
3. This rule does not apply to employees waiting or traveling in the exercise of their seniority.

Position of Organization

The Organization maintains that the Carrier violated Rule 32 when it denied the Claimants' request for travel time compensation, specifically straight time as well as mileage reimbursement. The Organization argues that the Carrier directed the Claimants to use their personal vehicles to travel outside of their regularly assigned

hours to report to locations outside of their regular work locations in connection with overtime service.

The Organization argues that it has satisfied its burden of proof. In support, the Organization cites the Board to Third Division Award No. 43455 (Meyers, 2019)(“Meyers Award”), which holds

The Carrier relies on the words [in Rule 32] “by direction of MBCR” and says that it can deny the travel reimbursement to the Claimant because they were working on a voluntary basis. This Board disagrees. A review of [Rule 32] 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 [with the Carrier’s interpretation].

Carrier’s Position

The Carrier maintains that the Organization has failed to satisfy its burden of proof. The Carrier contends that the clear and unambiguous language of Rule 32 limits travel time compensation and mileage reimbursement to situations where the Carrier directs the employee to work and the employee is authorized to use his/her own vehicle.

The Carrier claims there is no evidence it directed the Claimants to perform the work for which they are seeking travel time compensation. The evidence established that the Claimants voluntarily accepted and traveled to the overtime work assignment based on their seniority—i.e., in the exercise of their seniority rights. In support, the Carrier cites the Board to Third Division Award 44699 (Valle, 2022)(“Valle Award”). The claims, facts and circumstances before the Boards in both the Meyers Award and the Valle Award were identical. The Valle Award held as follows:

Upon consideration of the whole on property record, this Board finds and concludes as follows. The plain language of Rule 32 requires payment of “straight time for actual time waiting and/or traveling” only for an “[a]n employee waiting, or traveling by direction of the Carrier. Moreover, the plain language of Rule 32 requires “standard...mileage reimbursement” only for those employees “authorized to use their personal vehicle” for such travel. Finally, the plain language of Rule 32 expressly states that it

does not apply to employee waiting or traveling in the exercise of their seniority rights.” [Emphases added.]

Analysis

This is a rules case. For that reason, the Organization has the burden of proving its case by a preponderance of the evidence. Generally, in rules cases, the Board will examine the facts brought forward by the Organization and compare and analyze those facts against the relevant agreement provisions at issue.

The Claimants believe they are entitled to travel compensation pursuant to Rule 32. The language of Rule 32 is clear and unambiguous. But the Meyers Award and the Valle Award interpret the language of this rule differently. This Board has carefully read and studied both awards. The Meyers Award disagreed with the Carrier's contention that the phrase "by direction of MBCR" excludes voluntary overtime. It concluded that if the parties had wanted to exclude voluntary overtime, the parties could have included that exception in Rule 32. However, the plain wording of Rule 32 does not support the Meyers' Award's conclusion. The Valle Award, relying on the plain wording of Rule 32, concluded that the phrase "by direction of MBCR" means work that is directed by the Carrier.

This Board concludes that the Valle Award's interpretation of Rule 32 is consistent with the plain wording of Rule 32. The phrase "by direction" in Section 1 conditions the Carrier's obligation to compensate employees for travel. The plain meaning of the phrase "by direction" means that the Carrier must direct or assign the employee to the work in question to qualify for travel compensation. If the parties had wanted to compensate employees for volunteering for work, they could have agreed to include wording to that effect.

The evidence establishes that the Claimants volunteered for the work assignments for which they seek travel compensation under Rule 32. There is no evidence that the Carrier directed the Claimants to work the assignments for which they seek travel compensation. For this reason, the Organization failed to satisfy 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 Claimants not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of December 2024.