PUBLIC LAW BOARD NO. 6399

CASE NO. 27
AWARD NO. 27

Brotherhood of Maintenance of Way Employes
Division - IBT Rail Conference

and

Norfolk Southern Railway Company
(former Norfolk & Western Railway Company)

Claimants: N. Clay and T. Watson

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed to properly compensate Messrs. N. Clay and T. Watson after changing their work location to Bryan, Ohio on November 22 and 23, 2019 (System File D-20NS43-431/MW-DEAR-20-06-SG-041 NWR).

2. As a consequence of the violation referred to in Part 1 above, Claimants N. Clay and T. Watson shall now each be compensated for two (2) minutes per mile for actual miles driven to and from the Claimants' respective residences and Bryan, Ohio on November 22 and 23, 2019."

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that the Public Law Board 6399 has jurisdiction over the dispute involved herein and that the parties were given due notice of hearing thereon.

The Claimants have established and maintain seniority in the Carrier's Maintenance of Way and Structures Department. Prior to the events that gave rise to this claim, the Claimants were working their respective assignments as a thermite welder and welder helper on Thermite Gang 84 in Elkhart, Indiana. The Claimants are classified as Various Headquarter employes and their regular work schedule was Monday through Thursday, 7:00 A.M. to 5:30 P.M.

On Thursday, November 21, 2019, at 4:30 P.M., the Carrier instructed the Claimants to report to Bryan, Ohio for service on Friday, November 22 and Saturday, November 23, 2019. The Claimants used their personal vehicles to travel to Bryan, Ohio from their respective residences on November

22 and November 23, 2019. It is undisputed that the Claimants received their lunch meal and collected the daily round-trip IRS rate mileage for each commute.

The Organization filed this claim on January 13, 2020, which was denied by the Carrier on March 3, 2020. The claim was appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that pursuant to the clear and unambiguous language of Rule 43 (II)(D), the Claimants were entitled to be compensated for two minutes per mile for actual miles driven between their respective residences and Bryan, Ohio on November 22 and 23, 2019. That portion of the Rule states,

> RULE 43 – TRAVEL TIME AND EXPENSE
> II. Employees not in Camp Cars, Camps or Highway Trailers:
> Such employees who are required in the course of their employment to be away from their headquarters point as designated by the Company, including employees filling relief assignments or performing extra or temporary service, shall be compensated as follows:
>
> ***
>
> (d) If the time consumed in actual travel, including waiting time enroute, from the headquarters point to the work location, together with necessary time spent waiting for the employee's shift to start, exceeds one 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 his headquarters point or to the next work location exceeds one hour, then the excess over one 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 minutes per mile traveled**.
>
> Such employees shall not be compensated under this Paragraph (d) for any time spent in traveling during hours paid for as working time at either straight time or overtime rates. **Such employees will also not be allowed time while traveling in the exercise of seniority rights, or between their homes and designated assembly point, or for other personal reasons.** (emphasis added).

The Organization contends that there is no dispute that on Thursday, November 21, 2019 at 4:30 P.M., just one hour before the end of the Claimants' workweek, the Carrier instructed the Claimants that it was changing their headquarters location from Elkhart, Indiana to Bryan, Ohio, and that they were to report to Bryan, Ohio for service for the following two days. The Organization contends that this last-minute overtime assignment was unplanned and outside of the Claimants' normal work week. The Organization contends that the Claimants were not provided with transportation and that they used their personal vehicles to travel between Bryan, Ohio and their respective residences on November 22 and 23, 2019, in order to comply with the Carrier's instruction.

The Organization contends that arbitral boards have regularly held that when the Carrier's instructions require employes to travel using their personal vehicles, those employes are due compensation in accordance with the travel pay provisions of their respective Agreements.

The Organization contends that the Carrier's reliance on Rule 43(II)(e)(4) is misplaced, as the cited section deals only with Travel Allowance for a regular work week move of returning home and subsequently returning to work the next scheduled day. Here, the Claimants returned to their residences for the sole purpose of obtaining necessary supplies such as clothing and toiletries for this last-minute assignment, not because they were electing to return home in lieu of staying in Carrier-provided lodging. The Organization contends that this was not a personal expense chosen by the Claimants when they could have availed themselves of Carrier transportation or lodging.

The Carrier contends that the Claimants were not entitled to the compensation under Rule 43(d), as the Claimants were never required to travel between any headquarters or work points. The Carrier asserts that the Claimants elected to travel home rather than accept Carrier provided lodging and so were properly compensated under Rule 43, Section (II)(e)(4), as modified by Section III of the May 25, 2009 Agreement, which reads,

> RULE 43 – TRAVEL TIME AND EXPENSE:
> II. Employees not in Camp Cars, Camps or Highway Trailers
> ***
> (e)(1) It is the intention of the Company to arrange and pay for lodging facilities which are adequate for the purpose, where applicable, with the assignment of not more than two (2) employees to a room with separate beds. Employees who, of their own accord, fail to occupy such lodging facilities after accommodations have been reserved will be liable for the cost of that portion of the lodging accommodations. Employees will also be liable for any damage to accommodations due to their improper actions….
>
> (4) In lieu of lodging and meal allowances, specified above, an employee working away from home and if camp car is not provided, may elect to drive his personal vehicle to and from his home and his designated assembly point **on his own time** and be reimbursed for such mileage at the applicable mileage allowance (up to a maximum total per day of 120 miles) and be allowed $4.00 for lunch meal expense when incurred. (emphasis added.)
>
> May 25, 2009, Agreement:
> ROUND TRIP MILEAGE HOME FOR REST DAYS FOR TRAVELING EMPLOYEES WHO COMMUTE FROM HOME IN THEIR PERSONAL VEHICLE IN LIEU OF STAYING IN A MOTEL:
> A. Employees on positions that do not have a fixed headquarters, who are not provided camp cars and commute from home in their personal vehicle during

> the workweek in lieu of using a Company provided motel, will be reimbursed the flat amount of $25 for their one round trip made in their personal vehicle between work and their residence over their rest days...The employees' round trip home and back in their personal vehicle each day during the workweek, in lieu of using a motel, remains covered by Rule 43 (II)(e)(4)…

The Claimants were assigned to Various Headquarter positions and were offered Company-provided lodging during the work week while working away from home. Had they stayed in the Company-provided lodging, they would have received three meals a day and a travel allowance to offset the cost of the weekly rest day commute between home and the assigned reporting locations.

The Carrier contends that employes who live near the designated reporting locations may choose to commute home each night, as the Claimants did between November 21 and 23, 2019. As a result, both Claimants received Company-provided lunches each day, a flat weekly travel allowance of 25 dollars, and reimbursement for up to 120 miles daily at the IRS rate for the daily round trip commute. There is no provision for travel time under these circumstances.

In this case, the Carrier contends, it merely changed the reporting location of a two-person Thermite Welding gang from Elkhart, Indiana to Bryan, Ohio. The Carrier contends that nothing in the Agreement required the Carrier to pay travel time between a work location and a residence under any circumstances, let alone because of a change in reporting location for Various Headquarter employes.

The Carrier contends that the Rule cited by the Organization is entirely inapplicable to the circumstances here. Rule 43(II)(d) does not address an employe's travel between their residence and designated reporting location but to an employe's travel between a designated headquarters point and their work location. The Carrier contends that the Rule specifically precludes travel time compensation for travel between an employee's home and a designated reporting location.

The Board has carefully considered the parties' arguments and citations. We find that the language relied on by the Organization that provides, "When employees are traveling by private automobile time shall be computed at the rate of two minutes per mile traveled," is applicable only in the circumstances described in Rule 43 (II)(d), which are not the circumstances here. The Claimants were not traveling from the headquarters point to the work location, and payment for travel time is expressly excluded for time spent traveling between their homes and designated assembly point, as the Claimants were doing. The Claimants declined the Carrier's offer of Carrier-provided lodging, which they were entitled to do, but cannot then claim a benefit not due to them.

When the language of the parties' agreement is clear and unambiguous, this Board need look no further than the negotiated language agreed to by the parties to resolve their dispute. Here, the interpretation urged by the Organization that would require the Carrier to pay Various Headquarter employes for travel time between their residences and their reporting location, cannot be found in the language negotiated by the parties. Thus, in order to sustain the claim, this Board would have to add to or subtract from the clear and unambiguous terms of the controlling Agreement. We have neither the authority nor the inclination to do so.

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.

Scott M. Goodspeed, Carrier Member	Kathryn A. VanDagens, Chairman	David M. Pascarella, Employe Member

Dated: 2-23-2026