

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36632
Docket No. SG-36104
03-3-00-3-283

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (former Missouri Pacific):

Claim on behalf of E. L. Mitchell for payment of \$321.75 in expenses, account Carrier violated the current Signalmen's Agreement, particularly Rules 5 (c) and 7 of the Ancillary Mobile Signal Gang Agreement when it failed to reimburse the Claimant for noon meal expenses incurred during the months of February, March, and April of 1999. Carrier's File No. 1186599. General Chairman's File No. 99-17-M-A. BRS File Case No. 11291-MP.”

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.

This claim filed on April 9, 1999, seeks noon meal allowance on behalf of the Claimant for 33 days between February 1 and April 8, 1999 at \$13.50/day, asserting that he was entitled to such reimbursement because he was working on a mobile signal gang, regardless of the distance between his residence and his work location, some 21.5 miles.

Rule 5 (c), relied upon by the Organization, provides:

"Employees on mobile gangs will be allowed actual necessary meal expenses for each day worked, including the evening meal the night before their assignment workweek begins."

On the property the Carrier initially responded to the claim by noting that part of it was untimely, as it encompassed a period more than 60 days prior to its filing. It also asserted that it would be a violation of Federal income tax laws to reimburse the Claimant for his noon meal expenses. After the Organization provided facts in rebuttal to these contentions, the Carrier pointed out that it was unable to verify the validity of the amount claimed because the Claimant had failed to submit any documentation to support the amount requested. While the Organization replied that it "disagreed with your assertion," the record contains no evidence substantiating the Claimant's expenses.

The Organization argues that the Carrier violated Rules 5(c) and 7 by denying the Claimant's Expense Reimbursement Form, noting that the claim is timely as it begins to run when the Claimant received his check and reimbursements about February 15, 1999, not when he submitted his form. Further, the Organization asserts that reimbursement of out-of-pocket expenses is remuneration that is not considered taxable income for Federal income tax purposes. Finally, the Organization contends that the amounts for meal reimbursement under Rule 7 had been modified to \$13.50 per day at the time in issue.

The Carrier argues that the Organization did not establish that the Claimant incurred any actual meal expenses at noon during the period of the claim, because it failed to place into the record any receipts or evidence of amounts expended by the Claimant, or copies of his Expenses Reimbursement Form. It asserts that Rule 5(c) permits the payment of actual necessary expenses only, and that the Organization's

failure to support the Claimant's request for reimbursement in the amount of \$13.50/day requires denial of his claim, citing Third Division Awards 33650, 32620, 27967, 27039, 26458; Second Division Award 11482.

Initially we note that the Organization is correct on the time limit issue. Tendering an Expense Reimbursement Form does not constitute a claim within the meaning of the parties' Time Limit on Claims Rule. The Claimant has not suffered any harm and the alleged breach of the Agreement does not occur unless or until the Carrier ultimately disallows some or all of the expenses claimed. It is premature to characterize an Expense Reimbursement Form as a claim when the Carrier may pay the sum requested. Thus, the denial of a request for meal allowances is the occurrence which ripens into a potential claim. As that occurred on or about February 15, 1999 in this case, the instant claim was initiated within the 60 day time limit.

Without deciding the issue, it appears from the record that the Carrier did not pursue its argument concerning a Federal tax law violation, and thus abandoned such position before the Board. With respect to the merits, a careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of the Agreement in this case. The record is devoid of any evidence to support the Claimant's entitlement to noon meal expenses in the amount of \$321.75. Rule 5(c) provides for reimbursement of "actual necessary meal expenses." No receipts or other form of proof that the Claimant actually incurred any meal expenses was provided to the Carrier on the property, or is included in the record before the Board. Similar language in other agreements has been interpreted as requiring proof of actual necessary expenses by the Claimant or the Organization before it can establish entitlement to such reimbursement, and that a generalized submission of estimated meal costs up to the maximum permitted is insufficient to meet its burden. See Third Division Awards 33650, 27967, 27039 and 26458. Accordingly, this claim must fail for lack of proof.

AWARD

Claim denied.

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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 29th day of July 2003.