

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37713
Docket No. SG-37915
06-3-03-3-320**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

Claim on behalf of T. N. McBroom, for \$38.33 for mileage incurred, account Carrier violated the current Signalmen’s Agreement, particularly Rule 58, when on April 29, 2002, it directed the Claimant to change his headquarters point from DeQueen, Arkansas, to Heavener, Oklahoma, a distance of 105 miles. The Claimant was required during the workday to use his personal vehicle for the change because the company did not provide transportation and then Carrier refused to pay for the mileage. Carrier’s File No. K06025625. General Chairman’s File No. 02-062-KCS-185. BRS File Case No. 12575-KCS.”

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 Claimant's headquarters point was DeQueen, Arkansas. On April 29, 2002, at the direction of the Carrier, the Claimant used his personal vehicle to change his headquarters point to Heavner, Oklahoma. The Claimant was paid for the time spent driving to make the change. According to the claim, he was not paid proper mileage compensation.

The Organization alleges a violation of Rule 58. It argues that the Claimant is allowed reimbursement for the use of his personal vehicle in these circumstances due to the fact that the change was not made during his absence from a work point, on his rest day or on a holiday. The change was made by a morning conference call at the DeQueen, Arkansas, work point. The Claimant was informed to change work points and provided no transportation. Rule 58, "Traveling from One Work Point to Another" states:

- "(a) Time spent in traveling from one work point to another (during regular assigned hours, outside of regularly assigned hours or on a rest day or holiday) shall be paid for at the straight time rate.
- (b) An employee who is not furnished means of transportation by the railroad company from one work point to another and who uses other forms of transportation for this purpose shall be reimbursed for the cost of such other transportation. If he uses his personal automobile for this purpose in the absence of transportation furnished by the railroad company he shall be reimbursed for such use of his automobile at the Carrier authorized automobile mileage allowance. If an employee's work point is changed during his absence from the work point on a rest day or holiday this paragraph shall apply to any mileage he is required to travel to the new point in excess of that required to report to the former work point."

The claim of the Organization is that the mileage requested was proper and unpaid as per Section (b) which is applicable. The distance from his former headquarters located at DeQueen and his new headquarters in Heavener was 105

miles and improperly reimbursed under Rule 58, supra. The Organization denies the relevance of the Claimant's residence on the issue of payment for mileage and requests full mileage reimbursement.

The Carrier denied the claim. Its position is that the Claimant was headquartered at DeQueen, Arkansas. However, he was released from duty on April 25, 2002. Thereafter, the Claimant never returned to DeQueen, Arkansas. In fact, the Carrier contacted him on the morning of April 29, 2002 at his residence at Gillham, Arkansas, to change his headquarters point to Heavner, Oklahoma. The Carrier argues that Rule 58(b) applies due to the fact that the Claimant's work point changed while he was on his rest days. It further argues that after the change, the Claimant was required to travel 94 miles from Gillham to Heavner. Prior to the change, he was required to travel from his Gillham residence to DeQueen, or 11 miles. Because the above cited Rule applies to the difference between the 94 miles and 11 miles, 83 miles represents the excess mileage.

The Board reviewed all of the arguments herein. We are cognizant of the Organization's arguments pertaining to the home station listed as the motel assigned, the regularly assigned signal gang position, and vacation relief, among others. These arguments and issues are not persuasive. The burden of proof rests with the Organization to provide substantial probative evidence for its argument that the Carrier's actions violated the Rule. It has not done so. There is no proof in this record of any prior payment made consistent with the Organization's interpretation. If correct, prior statements, records, or Awards would suffice for a prima facie case. There are none.

Further, the Board not only notes a lack of substantive support, but also finds a recent Award over this same issue. In Third Division Award 37551, the Board found no support for the Organization's argument. We find no reason to consider that Award in error and, therefore, conclude in similar fashion that the claim lacks support and the interpretation requested must be rejected.

However, the Board notes that the final declination of January 20, 2003 by the Carrier states in pertinent part:

"After further review . . . Rule 58 would apply to any mileage he is required to travel to the new work location in excess of that required to return to the former work location. Claimant's new work

location (Heavener) was closer to his starting point than his old work location (DeQueen). The Claim remains denied.”

The Board is unsure from this record if proper payment was or was not made to the Claimant. The Board remands this issue to the parties to make sure that the Claimant was properly compensated. If the new headquarters point at Heavener was further than the former work location of De Queen by 83 miles, compensation is due for the excess mileage. If not, and the above final declination is correct, no compensation is due.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 30th day of January 2006.