

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37727
Docket No. SG-36946
06-3-01-3-530

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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:

Claim on behalf of S. R. Challis for payment of \$72.15. Account Carrier violated the current Signalmen's Agreement, particularly Appendix O, Section 11 when on July 2, 2000 Carrier failed to compensate the Claimant for use of his personal automobile from Oregon City, Oregon to Pendleton, Oregon in connection with the relocation of his gang. Carrier's File No. 1247046. General Chairman's File No. W-36-086. BRS File Case No. 11690-UP."

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 record herein establishes that the Claimant is the Foreman of a Zone Gang. He drove his personal automobile some 222 miles on the claim date when his gang relocated in the middle of its work period. The record also establishes that the Carrier provided transportation for the employees to the new work location and, for those employees who left their personal vehicles at the old location, the Carrier provided transportation back to their vehicles at the end of the work period. Employees who, like the Claimant, did drive their vehicles to the new location were allowed to do so on paid time.

As noted in the Statement of Claim, the Organization relied upon Appendix O, Sections 11(b) and (c) as the basis of the claim. In its initial denial, the Carrier pointed out that traveling gangs are governed by Rule 36. Thereafter, the Organization shifted the basis of its appeal to Rules 36 and 75. The Carrier asserted this manner of advancing the claim constituted a fatal procedural defect. However, we note from the Organization's Submission and the Statement of Claim that it progressed the same claim, based on Appendix O, Section 11, to the Board that it initiated on the property. Thus we will review its merits.

Notwithstanding the foregoing procedural discussion, the record establishes that Rule 36 governs the instant dispute. The Organization never effectively refuted the Carrier's position that Rule 36, entitled "TRAVELING GANG WORK," controls the instant dispute. It is well settled that such unrefuted assertions become established fact for the purpose of this record. Accordingly, we turn to the Rules themselves for further analysis.

Rule 36 reads, in pertinent part, as follows:

"If a mobile unit is moved and employees assigned thereto are not able to move their vehicle during the time the mobile unit is being moved, the employees will be returned to the location of their vehicle at the Company's expense."

The text of Rule 75, in its entirety, reads as follows:

"When employees are requested and are willing to use private automobiles for Company-use, an allowance will be made at the established automobile mileage allowance paid by the Company to its employees."

Although the Organization advanced several contentions, a careful review of the cited provisions show they do not support the Organization's position. The quoted portion of Rule 36 would apply only when an employee is not able to move his personal vehicle to the new location. It is clear on this record that the Claimant was able to move his vehicle and did so on paid time. Moreover, the Carrier's obligation under the Rule is to return the employee to his old location; it does not require payment of mileage expenses to a new location.

The record is also devoid of any evidence showing that the Claimant was required by the Carrier to move his vehicle to the new location. From the evidence in this record, it is clear that the Claimant relocated his vehicle as a matter of voluntary choice for his own convenience. Under these circumstances, nothing in Rule 75 requires payment of the mileage allowance sought by the claim.

Given the foregoing considerations, we must find that the Organization failed to satisfy its burden of proof to establish a violation of the Agreement. Accordingly, the claim, as presented, must be denied.

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 23rd day of February 2006.