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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38001
Docket No. SG-37536
06-3-02-3-599

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 (UP):

Claim on behalf of D. E. Beck, for \$314.64 in mileage expense, account Carrier violated the current Signalmen’s Agreement, particularly Rules 37, 70 and 80, when it required the Claimant to use his personal vehicle to travel to and from his headquarters from June 1, 2001, through June 30, 2001, a distance of 12 miles one way. Carrier compounded this violation by not allowing the Claimant to have an unjust treatment hearing. Carrier’s File No. 1283159. General Chairman’s File No. N37- 70-214. BRS File Case No. 12261-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.

In its July 24, 2001 claim letter, the Organization asserted that the Carrier had violated Rules 37, 70 and 80 of the Agreement when it denied the Claimant reimbursement for his expenses for driving his personal vehicle to and from work. It maintained that another employee who lived farther away from the territory on which both he and the Claimant worked was permitted to take a Carrier vehicle to his residence. The Organization noted that the Claimant was senior to the man taking the Carrier vehicle and had a shorter distance to travel. The Rules cited read as follows:

Rule 37 – Expense Accounts

“Employees will receive allowances for expenses as soon as possible consistent with accounting practices applicable to all classes. In the event the Company disputes any item(s) submitted on an expense account, payment will be made on undisputed items as outlined above.

Rule 70 – Unjust Treatment

An employee who considers himself unjustly treated, other than covered by these rules, will have the same right of hearing and appeal as provided in Rule 68B if written request is made to his immediate supervisor within ten (10) calendar days of cause of complaint. Failing to dispose of the complaint in such hearing, appeal may be taken in accordance with Rule 69.

Any complaint made by one employee against another will be made in writing.

Rule 80 – Loss of Earnings

An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss.”

As noted above, the preceding claim was filed on July 24, 2001. Its companion claim, filed May 4 and May 6, 2001 (by the Vice General Chairman and the General Chairman, respectively) regarded exactly the same issue (failure to compensate for mileage expenses) and included a request for an Unjust Treatment Hearing pursuant to Rule 70.

In its September 17, 2001 denial of the claim at issue in this case, the Carrier contended that Rule 80 was not applicable in this matter. It asserted that there was nothing in the Agreement regarding the Carrier's provision of transportation to and from an employee's personal residence. Thus, the Carrier maintained, there was no loss of earnings.

The Organization appealed the Carrier's denial on October 26, 2001. It disputed the Carrier's position and insisted that allowing a junior employee to use a Carrier vehicle while denying the Claimant reimbursement was not only a violation of the Agreement as argued in the initial claim, but also a waste of Carrier funds, because the distance from the Claimant's territory was less than one fourth the distance of the junior employee who was allowed to use a Carrier vehicle. In that appeal, the Organization also reiterated its position that the Claimant had been unjustly treated. In a follow-up letter dated November 8, 2001, the Organization additionally protested that the Carrier had disregarded the Claimant's request for an Unjust Treatment Hearing (letters of May 4 and May 6, 2001).

By letter dated January 3, 2002, the Carrier denied the Organization's appeal. In that denial, the Carrier reiterated its position that nothing in the Agreement provided for reimbursement for the Claimant on account of his driving his own, rather than a Carrier, vehicle to work each day. It also pointed out that only employees who are available for call may take a Company vehicle home. If employees are not going to be available for call during the period they are at home, they are instructed to leave the company vehicle on the property and to use their own vehicle to return to their private residence. The Carrier also contended:

"Whether an unjust treatment hearing is held or not would not alter the Claimant's lack of right to drive a company vehicle. In the absence of any such rights, there is no basis for the payment sought. Moreover, to the extent you are contending that lack of an unjust treatment hearing is an agreement violation, you are improperly

duplicating the original claim. Such duplication requires the claim to be dismissed.”

The Carrier also included in that denial a copy of a memorandum dated December 26, 2000, in which the Carrier notified employees that they must leave the company vehicle at their headquarters if they would not be available for calls.

With respect to the merits of the monetary claim, the Board reviewed the record and finds no evidence to contradict the Carrier’s position that the only employees, regardless of seniority, who are allowed to use Company vehicles to return to their residences are those who will be available for call. There is no documentation in this record to suggest that the Claimant was available for call, but was denied the use of a Company vehicle. Thus the Board finds that that portion of the claim must be denied.

However, despite the Carrier’s cavalier attitude regarding the Unjust Treatment Hearing, it does not have the latitude to simply ignore such a request, if timely made. To allow such discretion would be to irreparably damage the plain contract language in Rule 70. The purpose of that Rule is to allow an employee who believes – rightly or wrongly – that he or she has been unjustly treated to request a hearing into the matter. Nowhere in that Rule does it provide for the Carrier to pre-judge the matter and ignore a claimant’s request based simply upon its best guess regarding the validity of the claim.

Accordingly, the Board finds, albeit too late to benefit the Claimant – even procedurally – that the Claimant was entitled to an Unjust Treatment Hearing as requested, and that the Carrier violated Rule 70 by ignoring that request.

AWARD

Claim sustained in accordance with the Findings.

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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 25th day of October 2006.