

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38058
Docket No. SG-37539
07-3-02-3-602

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 five hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 13, 15, 70 and 80, when it allowed a junior employee to respond to a trouble call at a Hot Box Detector at MP 173.3, Colo, Iowa, on July 1, 2001, and deprived the Claimant of the opportunity to perform this work. Carrier compounded the violation when it violated Rule 70 by failing to allow the Claimant an unjust treatment hearing regarding Carrier’s instructions to the Claimant to leave his truck at his headquarters. Carrier’s File No. 1283160. General Chairman’s File No. N13 15-215. BRS File Case No. 12263-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.

This is a companion case to the matter considered in Third Division Award 38001. The facts and circumstances are identical to the facts in the foregoing Award, with the exception of the dates involved. For the purposes of confirming our position in that Award, we quote from the prior case:

“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.”

There, as here, the Board found, “albeit too late to benefit the Claimant,” that he 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.

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 January 2007.