

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38099
Docket No. SG-37870
07-3-03-3-243

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 Assistant Signalman S. R. McCoy, for actual and necessary expenses; eight hours at the straight time rate for traveling on Sunday, his rest day; and for Article XII benefits, until he has completed his Assistant Signalman Training Program, account Carrier violated the current Signalmen’s Agreement, particularly Rule 55 and Appendix S when on March 8, 2002, it force assigned the Claimant to a position on Gang 4536 located in Kansas City, MO, from his position on Gang 8654 located in Waco, Texas, which was his designated headquarters and then refused to properly compensate him beginning March 17, 2002, and continuing until he has completed his training program. The claim was filed as a continuing claim. Carrier’s File No. 1317317. General Chairman’s File No. S-55-Appendix-S-274. BRS File Case No. 12639-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 case involves a dispute concerning the application and interpretation of Rule 55 – NO VALID BIDS RECEIVED and Appendix S of the Agreement between the parties.

Rule 55 reads, in pertinent part, as follows:

“When a position is advertised for bid, no valid bids are received, and the position is to be filled, the junior unassigned signalman will be assigned. If there is no junior unassigned signalman available, the available senior assistant signalman with a minimum of one year of signal service will be assigned.

If the position is to be abolished, the notice of abolishment will be included on the next advertisement or assignment notice as information to the employees.

An employee force-assigned to a position under the provision of this rule will be eligible for Article XII benefits.”

Section 4 of Appendix S reads, in pertinent part, as follows:

“(a) Assistant Signalmen who are required at the direction of management to travel between work locations account being rotated to gain work experience will be paid travel time at their pro rata rate for actual time spent traveling including waiting time in route, not to exceed eight hours in any given day. For the purpose of computing time under this provision a day, including rest days and holidays, will be considered as commencing at the normal starting time of the employee’s regular assignment.

(b) Assistant Signalmen, who are required at the direction of management to travel and who are not furnished a means of transportation by the company will be reimbursed for the cost of

any authorized public transportation. If an employee is authorized to use his/her personal vehicle for transportation, he/she will be paid an allowance at the authorized rate per mile for normal roadway travel miles by the most direct route.

(c) Each Assistant Signalman and Assistant Signalman Candidate will be designated a headquarters point and home station on his/her seniority district which will remain unchanged until they have completed the training program and have been promoted to a Class 1 position. Assistant Signalmen and Assistant Signalmen Candidates who request a change in the headquarters assignment or who exercise their seniority in a normal manner to acquire a position at another location will do so without expense to the carrier and will assume the expense or per diem rules applicable to their new assignment. Assistant Signalmen and Assistant Signalmen Candidates who are rotated to gain the required work experience will assume the hours of service, the general working conditions, and the expense or per diem rules, if any, of employees or gangs to which they are assigned. When Assistant Signalmen or Assistant Signalmen Candidates are assigned to work with an employee who is assigned a fixed headquarters location away from their assigned headquarters, they will be reimbursed for actual necessary expenses incurred."

On March 8, 2002, the Claimant was force-assigned to a position on Gang No. 4536 in Kansas City, Missouri. At the time, the Claimant was an Assistant Signalman on Gang No. 8654 in Waco, Texas, and that was his designated headquarters. On April 20, 2002, the Organization filed the above claim on his behalf. The Organization alleged that because the Claimant had been force-assigned to a position, he was eligible for Article XII benefits. The Organization also noted that because the Claimant had not completed his training program, under the provisions of Section 4(c) (quoted above) he was entitled to have his seniority district remain unchanged until he had completed his training program. In sum, the Organization insisted that, because the Claimant used his own vehicle to drive from his residence to Independence, Missouri, rented a room for the weeks he was there, and incurred meal expenses, he was entitled to be reimbursed in accordance with Section 4(c).

The Carrier denied the claim on June 18, 2002. It contended that the Claimant was force-assigned per Rule 55, and that training was not applicable in his situation. It further contended that the Claimant was not covered under Appendix S, Section 4(c) and was, therefore, not entitled to reimbursement as requested in the claim.

Article XII, referenced in Rule 55, reads, in pertinent part, as follows:

“When a carrier makes a technological, operational, or organizational change requiring an employee to transfer to a new point of employment requiring him to move his residence, such transfer and change of residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement, notwithstanding anything to the contrary contained in said provisions, except that the employee shall be granted 5 working days instead of ‘two working days’ provided in Section 10(a) of said Agreement; and in addition to such benefits the employee shall receive a transfer allowance of \$800. Under this provision, change of residence shall not be considered ‘required’ if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point.”

In its appeal of the Carrier’s denial, the Organization pointed out that Appendix S provided that the Claimant’s seniority district should have remained unchanged until he had completed his training program and was promoted to a Class I position. It argued that because the Claimant had not finished his training program, he was entitled to actual necessary expenses incurred when the Carrier required him to change his headquarters point.

It is clear from this record that the Claimant had not finished his training program. Further, he was not actually required to change his residence – i.e., sell his house and move himself and his family from Waco, Texas, to Kansas City, Missouri. Accordingly, he does not technically fall under the provisions of Article XII with respect to entitlement to a “transfer allowance.” However, in the narrow circumstances of this case, the Claimant is entitled to reimbursement for “actual necessary expenses incurred” under Section 4(c) of Appendix S.

The present case is not dissimilar from the matter considered by the Board in Fourth Division Award 4691. In that case the Board found:

“The Claimant’s transfer obviously required, at least for employment purposes, a change in residence. Whether he chose to move his family is not relevant since he, as an individual, had to at least take up residence in Missouri in order to protect his assignment. Thus, this is not a situation where an employee, after a transfer, elects to commute between his home and the new point of employment and tries to unjustly gain moving benefits. . . .”

As noted above, due to the particular narrow circumstances of this case, the Claimant is entitled to reimbursement for actual necessary expenses incurred (receipts provided). The Board notes that the Claimant bid on and received a Signaller position on Gang 1495 and was released on April 30, 2002. Accordingly, reimbursement shall cease as of that date. All other remedies are rejected account not supported by the parties’ Agreement.

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 21st day of February 2007.