

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39370
Docket No. SG-39265
08-3-NRAB-00003-050677
(05-3-677)

The Third Division consisted of the regular members and in addition Referee Joan Parker when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(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. Aguirre, for \$126.00 in travel allowance, account Carrier violated the current Signalmen’s Agreement, particularly Rule 36, when the Claimant traveled from his work assignment to his home on September 27, 2004, and Carrier failed to compensate the Claimant for his travel time home.”

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.

Claimant S. L. Aguirre was assigned as a Signalman on Zone Gang 8617 at the time this dispute arose. The gang was scheduled to work September 22 through

September 29, 2004. However, on September 27, the Claimant left work and traveled via his private automobile to his home in order to attend a funeral. Undisputedly, the funeral was of a person (the Claimant's brother-in-law) who was not a family member under the Bereavement Leave Rule of the Agreement.

The Claimant drove a distance of 354 miles from his work location at Denver, Colorado, to his residence at Green River, Wyoming. He applied for travel allowance of \$126.00 pursuant to Rule 36, which reads, in relevant part, as follows:

"Zone gang employees will be reimbursed for actual and necessary expenses (lodging and meals). Employees will receive \$15.00 incidental expense allowance per day worked. Employees will receive \$9.00 for every twenty five (25) miles traveled from home to work at the beginning and end of each work period. The Carrier will give employees notice of work schedules and locations, except in emergency circumstances, so they can plan their travel."

The Carrier denied the Claimant a travel allowance, and on November 22, 2004, the Organization filed a claim on his behalf. The claim was denied by letter dated December 22, 2004. The parties exchanged additional correspondence and discussed the matter in conference on June 2, 2005. Having failed to resolve the matter, the parties submitted it to the Board for final and binding arbitration.

The Organization contends that with the Carrier's permission, the Claimant returned to his home two days earlier than his scheduled work period in order to attend his brother-in-law's funeral. According to the Organization, in the past, employees had numerous reasons for failing to attend work on the first or last scheduled day for the gang to work, and yet the Carrier compensated them. Therefore, it should not have refused to pay the Claimant his travel allowance in the instant situation.

The Carrier asserts that it did not violate Rule 36. In attending his brother-in-law's funeral, the Claimant was not covered by the Bereavement Leave Rule. Furthermore, the Claimant's travel from Colorado, to his home in Wyoming, on September 27, 2004 was in the middle of Gang 8617's work period. Therefore, the Carrier argues that based on the clear language of Rule 36, the Claimant was not entitled to the travel allowance for which he applied.

After careful consideration of the record, the Board finds that the Organization's position cannot be sustained. The specific language of Rule 36 is clear and unambiguous. It provides a travel allowance to employees who travel to and from work at the beginning and end of the work period. There is no language providing travel allowance to an employee who lays off work near the end of the work period. Moreover, the beginning and ending of the work period pertains to the gang, and not the individual employee.

This conclusion is supported by Public Law Board No. 6459, Award 8, which involved a claimant who displaced onto a signal gang on a day other than the beginning of the work period for the gang. The Organization had argued that even though the Claimant had shown up for work on a day other than the beginning of the work period, he was entitled to the travel allowance under Rule 36. Referee James E. Mason disagreed:

“Here we have a situation in which this Claimant did not effectively become a member of the Zone gang until the physical displacement occurred. Claimant became a member of the Zone gang during the regular assigned work period of the Gang. The language of Rule 36 is clear, concise, and free of ambiguity. It authorized travel mileage allowances only at the beginning and end of each work period. There is no room for interpretation of this language to mean that the work period of an individual who displaced onto a Zone Gang during an established work period somehow creates a separate work period for the employee making the displacement.”

Based on the wording of Rule 36, the “end of the work period” is the point when the gang goes home to observe its rest days. It is not the day when the individual gang member absents himself from work and travels home - regardless of the reason. Had the parties intended for there to be exceptions, or had they contemplated the payment of a travel allowance to employees leaving work “during the middle of the work period,” they would have written such qualifications into Rule 36.

As to the Organization's that in the past, the Carrier has paid employees a travel allowance in circumstances similar to that found in the instant case, suffice it to say that the Organization failed to prove this contention with credible evidence. There is no proof that any responsible management official authorized such payments if, in fact,

they occurred. Moreover, arbitral case law has long held that payments made without the knowledge and/or approval of the management official authorized to make such payments or interpret applicable contractual language have no effect on the rules of the agreements. It is also well established that clear contract language takes precedence over contrary past practices. In the instant case, Rule 36 is clear and unequivocal. Therefore, even if there was an inconsistent prior practice, such practice could not supersede or alter the clear language of the negotiated Agreement. (See, for example, Third Division Awards 31082 and 28814.

For all of the foregoing reasons, the Organization failed to prove that any provision of the Agreement was violated and/or that the Claimant had any entitlement to the travel allowance he claimed.

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 21st day of October 2008.