

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39378
Docket No. SG-38720
08-3-NRAB-00003-050033
(05-3-33)

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of E. E. Colon, for seven hours at his overtime rate of pay and expenses totaling \$406.19, account Carrier violated the current Signalmen’s Agreement, particularly Rules 18, 24 and 75, when it required the Claimant to attend an unjust treatment hearing in Spring, Texas, on his rest day, September 30, 2003, and failed to compensate the Claimant for his time and expenses. Carrier’s File No. 1387663. General Chairman’s File No. S-18, 24, 75-455. BRS File Case No. 13064-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.

Under date of September 23, 2003, the Carrier addressed a letter to the Claimant in which it stated:

"Per your request, please report to the Union Pacific Railroad Company Offices, Conference Room, 24126 ALDINE WESTFIELD, Spring, TX 77373 on Tuesday, September 30, 2003 09:00 A.M., CST, for Unjust Treatment Hearing in regards to your disqualification as Signal Maintenance Foreman."

The Unjust Treatment Hearing was held at the date and time noted above, and the results of that Hearing are not part of the claim. On November 11, 2003, the Organization filed its claim alleging that the Carrier violated Rule(s) 18 (Road Service Held Out Overnight) 24 (Service Performed On Rest Days and Holidays) and 75 (Private Automobiles) because the Claimant had not been compensated for attending the Unjust Treatment Hearing which was scheduled on the Claimant's rest day. The Carrier denied the claim on the basis that the Unjust Treatment Hearing had been personally scheduled by the Claimant and, in any event, did not qualify as "work" under the terms of the Agreement.

Following a careful review of the record and for the reasons that follow, the instant claim must be denied.

First, we cannot conclude on the basis of this record that Rule 18 was violated. The record reflects that the Claimant was not sent away from his home station, and held out overnight due to the fact that he voluntarily traveled to Spring, Texas, to attend an Unjust Treatment Hearing held at his request and on his rest day. There is nothing in the record that demonstrates that the Claimant and/or his Organization Representative requested the Unjust Treatment Hearing to be rescheduled to one of the Claimant's normal work days and/or that such a request, if made, was refused by the Carrier. Indeed, it is clear to the Board that the Claimant and/or the Organization had ample time to request a more convenient date and venue for the Hearing, but for some reason, chose not to do so. Accordingly, we cannot find the Carrier culpable for a decision that ultimately remained in the Claimant's hands.

Nor can we conclude that the Carrier violated Rule 24, because the Claimant's presence at the Unjust Treatment Hearing held at his own request is not "work" within the meaning of Rule 24. In this regard, "work" has been defined to include the regular

duties of an employee, or other emergency duties assigned by the Carrier. (See, e.g., Third Division Award 2512 where the Board concluded that "By far the greater number of decisions hold that attendance upon investigations does not constitute 'work' in contemplation of the basic day, overtime and call rules." See also Public Law Board No. 6402, Award 10 which similarly concluded "It has long been established on this property that, absent an express Agreement provision for payment of expenses incurred in attending an investigation, such payment is not required even where the claim is sustained.")

Finally, we cannot conclude that Rule 75 pertaining to the use of one's private automobile has been violated. In order to file a credible claim for use of a private automobile, the Rule requires that there be a specific request from the Carrier that the employee use his/her own private vehicle, and that use of one's private vehicle is for company business. The record evidence reflects that the Carrier never requested the Claimant to use his private vehicle to travel to the Hearing venue, a fact that automatically disqualifies the Claimant's demand for Rule 75 compensation. (See, e.g., Third Division Award 34086.)

For the reasons noted and discussed above, the instant claim is 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 8th day of December 2008.