

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39497
Docket No. SG-38746
09-3-NRAB-00003-050158
(05-3-158)

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of G. D. Ryan, for \$16.00 expense reimbursement, account Carrier violated Rules 33, 37 and 80, of the current Signalmen’s Agreement, when it denied payment for laundry expense incurred by the Claimant on January 16 and 22, 2004, while the Claimant was held away from his residence for a period of 13 days. Carrier’s File No. 1395935. General Chairman’s File No. W-33-369. BRS File Case No. 13151-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.

The Claimant was assigned as a Signalman on Gang 5780 headquartered at Las Vegas. The claim protests the Carrier's denial of the Claimant's request for reimbursement of laundry expenses incurred when the Claimant was working in Deming, New Mexico, away from his residence for 13 days.

The Organization mainly relies upon RULE 33 - MEALS AND LODGING FURNISHED:

"In emergency cases, such as derailments, washouts, snow blockades, fires and slides, employees taken away from their headquarters to perform work elsewhere will be furnished meals and lodging by the Company where possible. If the Company cannot or fails to furnish such meals and lodging, the employees will be reimbursed for the actual and necessary expense thereof."

The Organization's argument lacks Rule support. Rule 33 provides for reimbursement of "meals and lodging" if not provided by the Carrier. Nothing is mentioned in that Rule about laundry expenses.

But assuming that language is somehow ambiguous, the rules of contract construction can be used to discern the parties' intent. An axiomatic rule of contract construction dictates that to express one thing is to exclude another. By specifically including "meals and lodging" and not mentioning "laundry expenses" in Rule 33, under this rule of contract construction it is fair to conclude that laundry expenses were not intended to be covered by Rule 33.

There is no evidence of a bona fide past practice of such payments to warrant an interpretation to require reimbursement of laundry expenses. See Third Division Award 34207.

Finally, the Organization's reliance upon a policy providing for such payment is not persuasive. The Carrier asserts that policy applies to non-agreement

employees. At best, the question is in dispute and a record with conflicting interpretations is not sufficient to meet the Organization's burden.

In light of the above, the Carrier's procedural arguments are moot.

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 2nd day of February 2009.