

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39657
Docket No. SG-39214
09-3-NRAB-00003-050685
(05-3-685)**

The Third Division consisted of the regular members and in addition Referee Joyce M. Klein 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 Railroad:

Claim on behalf of J. G. Keith, for the difference between the schedule rate of pay between Signalman and Signal Maintainer, continuing until this dispute is resolved, rectification of the hostile work environment and that the Claimant be allowed to return to his former Signal Maintainer’s position, account Carrier violated the current Signalmen’s Agreement, particularly Rules 70 and 80, when it denied the Claimant’s request for an Unjust Treatment Hearing in regard to an incident that occurred on November 2, 2004. Carrier’s File No. 1416287. General Chairman’s File No. N 70 516. BRS File Case No. 13338-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.

Claimant J. G. Keith alleged that he was unfairly denied an Unjust Treatment Hearing pursuant to Rule 70 of the current Agreement after he claimed that MSM O'Brien harassed him and forced him to leave his position by wrongly charging him with leaving his assignment on or about November 2, 2004, without completing eight hours of work. The Claimant was apparently observed leaving his assignment prior to completing eight hours of work by MSM O'Brien. When queried about his apparent departure, the Claimant indicated that he had gone to refuel his vehicle and that he had a gas receipt as proof. The Claimant, of his own volition, then bid on a position on a Zone Gang, with lower pay and further from home.

On December 16, 2004, the Claimant, together with an Organization representative, met with O'Brien and DSM Hauser in order to clear up the situation. At that meeting, the Claimant's allegations regarding alleged harassment by O'Brien were thoroughly discussed. The Claimant was afforded an opportunity to explain that he believed that O'Brien had observed another employee and to produce the gas receipt. Further the Claimant was assured that harassment by managers would not be permitted, but was also advised that managers have an obligation to ensure that time is reported correctly. The Claimant was offered an opportunity to return to his previous position, but did not elect to do so. The Claimant's maintenance position was advertised three times, but the Claimant did not apply, and the position was ultimately filled by an individual with less seniority.

The Organization argues that the Claimant sought and was denied an Unjust Treatment Hearing pursuant to Rule 70, which provides:

"An employee who considers himself unjustly treated, other than covered by these rules, will have the same right of hearing and appeal as provided in Rule 68 B if written request is made to his immediate supervisor within ten (10) calendar days of cause of complaint. Failing

to dispose of the complaint in such hearing, appeal may be taken in accordance with Rule 69.”

The Organization maintains that the Claimant was thus deprived of his right to work as a Signal Maintainer at a rate of \$22.98 per hour at a location near his home and instead needed to work as a Signaller at a rate of \$21.67.

The Carrier asserts that an Unjust Treatment Hearing occurred on December 16, 2004. The Carrier alleges an Unjust Treatment Hearing is not subject to the same procedural requirements as a disciplinary Investigation. Additionally, the Carrier points out that Rule 70 does not require that the employee be satisfied with the results of an Unjust Treatment Hearing.

The Board carefully reviewed the on-property record. At the meeting on December 16, 2004, the Claimant was permitted to fully express his views regarding the alleged harassment by his supervisor. The Claimant produced evidence that he had not left work early, was assured that harassment would not be tolerated, was offered an explanation of the need to ensure that time is recorded properly and was offered the opportunity to return to his previous position. An Unjust Treatment Hearing provides an employee the opportunity to express his views regarding alleged harassment or other unjust treatment, but does not guarantee that the employee will be fully satisfied with the results. In this instance, the December 16, 2004 meeting provided the Claimant with a full opportunity to express his views in compliance with Rule 70 and the record reflects that the parties attempted to resolve the Claimant's concerns. That he chose not to return to his previous position was solely his decision and cannot be found to be the result of a violation of Rule 70. Under these circumstances, the Board must deny the claim.

AWARD

Claim denied.

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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 22nd day of April 2009.