

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39659
Docket No. SG-39386
09-3-NRAB-00003-060031
(06-3-31)

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. E. Bolte, for \$315.00 in travel allowance, account Carrier violated the current Signalmen’s Agreement, particularly Rule 36, when it failed to compensate the Claimant for his travel on November 19, 2004, from his home in Nickerson, Kansas to his assigned common lodging facility at El Paso, Texas. Carrier’s File No. 1415912 (S4-UP309). General Chairman’s File No. N 36 515. BRS File Case No. 13339-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.

In this case, the Claimant, who entered service with the Carrier on May 2, 2000, was working an eight days on/six days off work schedule on Zone Gang 8617 when he was displaced on October 11, 2004. He was permitted to remain in that position until the end of Gang 8617's work schedule on October 13, 2004. The Claimant then notified the Carrier that he would exercise seniority to Zone Gang 8618. After completing his assigned rest days, on October 19, 2004, the Claimant traveled 878 miles to his assigned common lodging facility for Zone Gang 8618 in El Paso, Texas. The Claimant seeks reimbursement for his travel expenses in traveling to El Paso pursuant to Rule 36 – TRAVELING GANG WORK which provides:

“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 Organization argues that the Claimant incurred travel expenses for actions he was required to take to begin his work on Zone Gang 8618 and to maintain his career as a Signaller and is entitled to compensation for his travel expenses pursuant to Rule 36.

The Carrier asserts that the Claimant was not officially on Gang 8618 until he began work on October 20, 2004 at which time he exercised his seniority and physical displacement occurred. The Carrier relies upon Rule 58 and Public Law Board No. 6459, Award 8 which directly addresses the same issue. The Carrier asserts that stare decisis requires the same ruling in this case. Rule 58 – DISPLACEMENTS states in pertinent part:

“(B) An employee exercising his displacement rights under this rule must give notice of his intention to displace to the individual being displaced and to Non-Operating Personnel Services, the supervisor and local chairman of the district no later than during regular work hours of the regular work day

immediately preceding the date of actual displacement. A displacement is not effective until the employee is physically displaced. With the concurrence of management, employees who have been notified of their displacement may move prior to a physical displacement in order to avoid the loss of time.

* * *

- (D) In the event a new position is created, or a vacancy exists, an employee entitled to make a displacement may take such new position, or vacancy, until such time as the successful applicant is assigned. The employee's exercise of seniority will be considered as his/her bid on the position."

At issue is whether Rule 58 requires the Carrier to make Zone Gang travel payments as provided in Rule 36 to an employee who is traveling to exercise seniority, but has not yet taken a position. This issue was addressed by Public Law Board No. 6459 when it interpreted Rule 58 to establish "that a displacement is not effective until the employee being displaced is physically displaced." Public Law Board No. 6459, Award 8 distinguished between notice of displacement and actual displacement, finding that "displacement is not effective when the displacing employee gives notice of his/her intention." Under the doctrine of stare decisis, Public Law Board No. 6459, Award 8 is controlling. In this instance, the Claimant did not physically displace the employee with less seniority until October 20, 2004 when he began work with Zone Gang 8618 and thus, is not entitled to compensation for travel on October 19, 2004 under Rule 36.

The Organization would distinguish the Public Law Board No. 6459 ruling from this situation because here the Claimant had a continuous relationship to the Carrier and in the case before Public Law Board No. 6459 the Claimant had been on medical leave when he sought pay for travel to exercise seniority and displace another employee. However, Public Law Board No. 6459 created only a single exception included in the last sentence of paragraph B of Rule 58 "which allows an employee being displaced to, with management's concurrence, move prior to a physical displacement taking place in order to avoid loss of time by the displaced

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employee.” That exception does not apply here. Rather, the Claimant did not effectively become a member of Zone Gang 8618 and thus entitled to compensation for travel under Rule 36 until the physical displacement occurred. Accordingly, the Board must deny the claim as presented.

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 22nd day of April 2009.