

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40232
Docket No. MW-40570
08-3-NRAB-00003-080211**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to allow payment of mileage allowance to Foreman E. Bryant for use of his personal vehicle in coordinating the operation of the cat tampers on Gang 9172, such as change of job site locations, transporting cat tamper operators, and providing track safety, as submitted on expense forms for the therein cited work dates beginning June 1 through August 23, 2006 (System File T06-30/1465360 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. Bryant shall now be paid the aforesaid mileage allowance as submitted in the expense forms for a total of one thousand six hundred and four dollars and thirty-two cents (\$1,604.32).”**

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 E. Bryant holds seniority in several classifications in the Track Sub-department. The Claimant timely filed Personal Expense Reimbursement forms for the month of June on August 31, 2006; for the month of July on September 3, 2006, and for the month of August on September 6, 2006. The Claimant sought reimbursement for the use of his personal vehicle in the performance of his Foreman duties and transport of Continuous Action Tamper Operators from site to site on Mobile Gang 9172. His submission of this claim was consistent with his claim for and receipt of reimbursement for the use of his personal vehicle in January, February and March 2006.

On November 7, 2006, Manager Track Programs Martinez denied the claim for reimbursement for the use of Bryant's personal vehicle during the months of June, July and August 2006, because a Carrier vehicle was available for the Claimant's use. The Claimant, in a statement submitted on the property, states that no one offered him a vehicle for use in the performance of his duties. The Claimant's immediate supervisor (Purtle) submitted a statement on the property that the Claimant was made aware of the availability of a Carrier vehicle for his use in the performance of his duties. Supervisor Purtle contends that the Claimant elected to use his personal vehicle.

On December 14, 2006, the Organization filed this claim for \$1,604.32, the total mileage reimbursement for the three months of June through August 2006. The Carrier contends that this claim was untimely filed. The Board concludes that the time to file runs from the Carrier's denial of the claim on November 7, 2006. Therefore, the December 14, 2006 filing was timely.

The Carrier contends that it made a Carrier vehicle available to the Claimant. He elected to use his personal vehicle. The Claimant maintains that no one informed him that he could use a Carrier vehicle to perform his duties as a Foreman.

This case presents conflicting assertions with regard to material facts. The Board sits as an appellate body. The Board has no way to resolve the conflicting statements over whether supervision did or did not approve the Claimant's use of his personal vehicle, or offered him the use of a Carrier vehicle. In other cases presenting a dispute of facts, the Board has repeatedly held as it did in Third Division Award 33895:

"The Board is confronted on this record with an irreconcilable conflict in material fact, set forth in diametrically opposed written statements from the two primary witnesses. In such situations of evidentiary gridlock, it is well settled that the Board must dismiss the claim on grounds that the moving party has failed to establish a prima facie case."

In keeping with this well established precedent, the Board dismisses the claim.

AWARD

Claim dismissed.

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 December 2009.