

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40245
Docket No. MW-39368
10-3-NRAB-00003-060237
(06-3-237)**

The Third Division consisted of the regular members and in addition Referee Brian Clauss 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 to provide tools to Machine Operator G. Williams and when it failed and refused to reimburse him for his incurred expense of replacing required tools that were stolen from a Carrier vehicle, on Carrier property, while he was at work on March 15, 2005 (System File MW-05-76/1426274 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Williams shall now be reimbursed in the amount of four hundred twenty-four dollars and eighty-five cents (\$424.85).”**

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.

A review of the record evidence reveals that the Claimant was working as a Machine Operator on a Surfacing Gang on Tuesday March 15, 2005. He left a tool bag containing hand tools in a Carrier vehicle that was parked in the Carrier's Settegast Yard. Upon return to the vehicle, the Claimant discovered that the vehicle had been burglarized and his tools stolen. The Claimant filed a claim for the tools using the Carrier's Property Damage Claim Form. The property damage claim was denied on April 29, 2005. The Organization submitted the initial claim to the Carrier on June 2, 2005.

The Organization maintains that the Carrier violated the Agreement when it did not supply the Claimant with the necessary general tools as stated in Rule 48. The Claimant provided the tools that the Carrier did not furnish in order to perform preventive maintenance on the Carrier's equipment. These tools were necessary for the Claimant to perform his work and the cost of replacement should be reimbursed by the Carrier. Further, the claim was timely because it was filed after the property damage claim was denied.

The Carrier counters that the claim was not timely filed within 60 days of the occurrence pursuant to Rule 22. Even if the date of the property damage claim rejection is considered, the instant claim must be denied because Rule 48 does not cover personal tools. If the Claimant was alleging that the Carrier failed to supply him with the tools contemplated in Rule 48, a claim should have been filed when he first supplied his own tools.

The Board carefully reviewed the record evidence. A claim was filed approximately one week after the property damage claim was rejected. If the

property damage claim had been paid, the instant claim would not have followed. Under the specific facts of the instant matter, the Board finds that the claim was timely filed. However, the timeliness of the claim is not dispositive of the merits of the claim.

Rule 48 provides: "The Carrier will furnish the employees such general tools as are necessary to perform their work." Rule 48 does not address an employee's personal tools. The tools left in the Carrier's truck were the Claimant's personal property. If the Carrier did not supply the necessary tools, a claim might have been pursued for a violation of Rule 48. The instant claim is seeking payment for stolen personal property, not for the Carrier to provide necessary tools. Therefore, the 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 15th day of January 2010.