

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40522
Docket No. SG-39387
10-3-NRAB-00003-060032
(06-3-32)**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 T. J. Cowan, for \$297.00 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 13, 2004, from his assignment at El Paso, Texas to his home in Haven, Kansas. Carrier’s File No. 1415911 (S4-UP310). General Chairman’s File No. N 36 514. BRS File Case No. 13340-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.

There is no dispute regarding the basic facts. He worked a Signalman position as a member of Zone 1 Signal Gang 8618, at El Paso, Texas. The Claimant was displaced on November 13, 2004 and drove from his work to his home. The Carrier denied the Claimant pay under Rule 36, for which the Organization has filed this claim. Rule 36 states, in pertinent part, that:

“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.”

It is the position of the Organization that on November 13, 2004, the Claimant was released from his assignment by the Carrier after seniority displacement. As such, the Claimant traveled to his home from Zone 1 Signal Gang 8618 at El Paso, Texas, to Haven, Kansas. The Organization maintains that as per the above Rule, the Claimant was due payment of \$9.00 for every 25 miles he traveled, i.e., \$297.00 for the 845 miles.

The Organization argued on the property that all members of the gang were compensated for one trip from home to work and one trip from work to home, as per the Rule. It maintains that there has never been a contingency, as in this instant case, wherein the Carrier contends it is contingent upon when the Claimant left his position. In this instance, the Carrier did not hold the senior employee on his position until the end of the gang's schedule. The Carrier permitted this early move and, thereafter, attempts to penalize the Claimant for what he was forced to do. It argues that Rule 54 is inapplicable because the Claimant did not make the choice to bid to another position, but was displaced to another zone gang. The Claimant is entitled to the same allowance received by all members of zone gangs.

The Carrier refused payment arguing that the Claimant was not on the Zone Gang when he drove home on November 13, 2004. In fact, the Claimant was displaced and not released. Further, it was not at the end of the Gang's work, but in

the middle of the workweek. Having been displaced, the Claimant would thereafter need to exercise seniority to a new position. Rule 36 was not applicable in that the Claimant was not released from his gang, but displaced in the process of seniority. The Carrier points to Rule 54 in exercising seniority, particularly the language that “employees accepting positions in the exercise of their seniority rights will do so without causing expense to the railroad.” The Carrier contends Rule 54 is on point. It also argues that this issue has been settled by Public Law Board No. 6459, Award 8 and is stare decisis.

The Board carefully considered the above Rules and language. This is a fact driven and language determined case. The Claimant was displaced as a Signalman on Zone Gang 8618 by senior Signalman Peterson. It is undisputed that the work period for Zone Gang 8618 was not complete. In fact, the Claimant had worked four hours on November 13, 2004 when he was displaced. As the junior employee, he could not complete the work period of the gang and would have to displace another employee on another gang in order to continue his work.

Rule 36 clearly states that the travel allowance is paid only at two points: “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. . . .” Certainly, this was neither “at the beginning,” nor at the “end of each work period.” The Claimant did not complete his work period for which the Rule is applicable. The Board finds no Rule that requires the Carrier to hold the senior employee on his job, and as pointed out by the Carrier, Rule 58 controls the exercise of seniority under the ten-day displacement period. As indicated by Public Law Board 6459, Award 8 cited by the Carrier:

“. . . there is no room for interpretation of this language to mean that the work period of an individual who displaced on a Zone Gang during an established work period somehow creates a separate work period for the employee making the displacement. . . .”

The Board also finds Third Division Award 39659 directly on point, i.e., that a travel payment is not mandated by Rule 36 except at the beginning and end of the gang’s work period and not tied to the work period of any particular employee.

Form 1
Page 4

Award No. 40522
Docket No. SG-39387
10-3-NRAB-00003-060032
(06-3-32)

There is no proven violation of Rule 36 by the Carrier under these facts and the clear language of the Rule (See also Third Division Awards 37723, 39319, 39370, as well as Public Law Board No. 6459, Award 15). Accordingly, 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 June 2010.