

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40842
Docket No. SG-40715
11-3-NRAB-00003-080564

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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. L. Van Buren, Jr., for unpaid expenses including \$258.60 for the first half of March 2007, \$519.27 for the second half of March 2007, and \$259.23 for the first half of April 2007, account Carrier violated the current Signalmen’s Agreement, particularly Rules 33, 36, 37 and 80, when the Claimant was notified that his actual and necessary expenses submitted for the aforementioned periods were disallowed without any reason given by Carrier for its failure to approve the Claimant’s expenses. Carrier’s File No. 1477302. General Chairman’s File No. N 33 688. BRS File Case No. 14045-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.

The Claimant, a Zone Gang Signalman, submitted expense reports for March and April 2007. The Carrier decided that some expenses were not necessary and requested the Claimant to resubmit his expense report including only necessary and reasonable expenses. Instead, he filed this claim which raises the issue of what are reimbursable, actual, and necessary expenses under the provisions of Rules 33 and 36, which provide, in pertinent part:

“RULE 33 - MEALS AND LODGING FURNISHED

In emergency cases, such as . . . employees taken away from their headquarters to perform work elsewhere will be furnished meals and lodging by the Company where possible. If the Company cannot or fails to furnish such meals and lodging, the employees will be reimbursed for the actual and necessary expense thereof.

RULE 36 - TRAVELING GANG WORK

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 following provision of Rule 37 is also relevant to this dispute.

“RULE 37 - EXPENSES ACCOUNTS

Employees will receive allowances for expenses as soon as possible consistent with accounting practices applicable to all cases. In the event the Company disputes any item(s) submitted on an expense account, payment will be made on undisputed items as outlined above.”

The Organization argues that the language of these Rules is clear and unambiguous, does not provide parameters for reimbursement other than “actual and necessary,” and must be interpreted as written, citing Third Division Awards

10888, 12632, 19695 and 20687, as well as Second Division Award 6581. It asserts that the Carrier is not permitted to require an individual's expenses to conform to a particular grouping of people or an arbitrary limit it set at \$30.00/day. The Organization contends that because the Claimant provided his receipts for all expenses claimed, this should have been sufficient to meet the requirement for reimbursement for actual and necessary expenses. It notes that evidence from other employees reveals that they have received pressure from the Carrier not to put in expenses in excess of \$30.00/day for meals and have chosen not to seek reimbursement for actual expenses, and avers that the Claimant received a letter from the Carrier in response to his expense account threatening him with discipline if he did not change it. The Organization points out that the Carrier refused to pay the Claimant for undisputed items under the terms of Rule 37 until he resubmitted his expense account adjusting his actual expenses to be in line with its arbitrary limit, thereby holding his expense entitlements hostage.

The Carrier contends that it has the right to require an employee to be reasonable when incurring expenses while traveling on company business. It notes that the explicit language of Rule 36 requires that expenses be both actual and necessary, and argues that it agreed only to pay for actual meal expenses that are necessary. The Carrier asserts that this language clearly indicates that a degree of reasonableness is required for a meal to be "necessary," and that it has the right to establish reasonable measures to determine what is necessary when it comes to meal expenses, and has done so for many years with the knowledge of its employees, citing Third Division Awards 7549, 10923, 27673, 27674, 32620; Public Law Board No. 4078, Award 1; Public Law Board No. 1925, Award 25. The Carrier argues that because the Claimant's submitted meal expenses were well beyond what signal gang employees customarily spend for meals, and were excessive (\$40.00, \$43.00 and \$50.00 for dinner) they are unreasonable and not necessary, and it is not obligated to pay them. The Carrier asserts that it did dispute the amount of the Claimant's meal expenses under Rule 37, subtracted sums it believed were beyond necessary, and paid the Claimant the remainder of his expenses. It argues that the Organization failed to meet its burden of proof, and, at best, presented an irreconcilable dispute in facts which requires dismissal of the claim, citing Third Division Awards 30591 and 33895.

We agree with the Organization that it is the responsibility of the Board to interpret the Agreement as written, and to give effect to clear contract language. A careful review of the record convinces the Board that a reading of the "actual and

necessary” expense reimbursement requirement in Rule 36 contemplates that, in order to be reimbursable, employee meal expenses must not only be actual, as submitted and proven by the Claimant in this case, but must also be “necessary.” In interpreting that provision, we adopt prior Board precedent finding that the phrase “actual and necessary” cannot be equated with solely “actual” expenses, as argued by the Organization, but also encompasses the limitation that they be “necessary.” As stated in Third Division Award 32620:

“ . . . Said another way, the Rule says ‘necessary,’ and if that word has any meaning at all, it contemplates that at the end of the day someone must make a call as to which out-of-pocket expenses are excessive and which are unavoidable. On the record before us, it is simply impossible to conclude that Carrier has contracted away its right to deny expense claims it considers to be unnecessary. . . .”

In this case, we agree that the term “necessary” in Rule 36 includes a reasonableness determination to be made by the Carrier. On the basis of a comparison of the meal expenses submitted by other gang members, and an apparent unwritten policy and practice that no more than \$30/day is necessary and reasonable in these specific circumstances for meal reimbursement allowance, the record supports the Carrier’s conclusion that some of the Claimant’s meal reimbursement requests contained on his expense reports were excessive and not encompassed within the reimbursement provision contained in Rule 36. Because the Organization contends that the Claimant received no reimbursement for any of his disputed meals in violation of Rule 37, and the record is not clear as to whether any of the amounts submitted on the Claimant’s expense reports for the disputed three periods were paid by the Carrier, we sustain the claim, in part, with respect to the Claimant’s entitlement to reimbursement for a maximum of \$30.00/day of meal expense, and direct the parties to determine the amount of meal allowance permitted to the Claimant for the disputed days based upon such \$30.00/day limit, and to reimburse the Claimant for such amount, subtracting any monies already paid, if any, with respect to the disputed expense reports.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 11th day of January 2011.