

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37971
Docket No. SG-37423
06-3-02-3-437

The Third Division consisted of the regular members and in addition Referee John R. Binau 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 (UP):

Claim on behalf of D. E. Beck, for 34.5 cents for each mile the Claimant travels between his residence and his headquarters for each day worked and for trouble calls worked, starting April 30, 2001, and continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rules 70 and 80, when it failed to grant an Unjust Treatment Hearing to resolve this dispute. Carrier's File No. 1274446. General Chairman's File No. N70-203. BRS File Case No. 12085-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 was assigned to the position of Signal Maintainer with headquarters at Tama, Iowa, at the time of this dispute. The Claimant resides in LeGrand, Iowa, approximately 15 miles from his headquarters. On April 30, 2001 the Carrier instructed the Claimant to leave his company vehicle at the headquarters when he was off duty after he made himself unavailable for emergency calls.

In a letter dated May 6, 2001 the Claimant requested an Unjust Treatment Hearing be held under the provisions of Rule 70 regarding the Carrier allowing fellow Maintainers to take their assigned company vehicles home and instructing the Claimant to leave his company vehicle parked at headquarters. Because the Carrier did not respond to the request for an Unjust Treatment Hearing, the Organization filed the instant claim on behalf of the Claimant. The Organization contended that the Carrier was unjustly singling out the Claimant because no one else on the Claimant's seniority district was being forced to leave their trucks at the headquarters. The claim requested mileage of 34½ cents a mile from the Claimant's residence to his headquarters and from his headquarters to his residence for each day that he worked and each call that he took.

The Carrier denied the initial claim by letter dated August 13, 2001 pointing out that there is nothing in the Agreement about the Carrier providing transportation to and from an employee's residence. On August 15, 2001 the Organization appealed the Carrier's denial contending that it had been the practice of Maintainers and other Signal Department personnel to drive company vehicles from their homes to the work site and that it was common practice on the system. The Carrier denied the appeal and reiterated that there is no Agreement provision requiring the payment sought and that an Unjust Treatment Hearing could not grant such rights. The Carrier also pointed out that other Maintainers leave their company vehicles at headquarters when they are unavailable for calls. The Carrier also enclosed a December 26, 2000 Memorandum in which Manager Easley notified the employees under his supervision that they must leave their company vehicle at headquarters if they would be unavailable for calls. The Carrier concluded that because the Claimant was unavailable for calls he was not treated any differently than any other Maintainer. The Carrier also noted that because of improvement in his availability the Claimant has since been allowed to take his company vehicle home.

The Organization in its Submission repeated the above position. It also focused on the Claimant's right to an Unjust Treatment Hearing. It cited several Awards to support its position that there are no provisions that give the Carrier the discretion to deny an employee's request for an Unjust Treatment Hearing. The Organization concluded that by not allowing an Unjust Treatment Hearing the Carrier violated Rule 70 of the Agreement and, as a result, the Carrier should pay the mileage requested.

The Carrier argued that there is no Agreement support requiring the Carrier to furnish the Claimant with a vehicle to commute or to pay the Claimant for commuting expenses. The Carrier also stated that the Agreement does not support the Organization's theory that it can request and be granted some payment or amenity because the Carrier failed to grant an Unjust Treatment Hearing. The Carrier concluded that neither Rule 70 nor Rule 80 requires the mileage allowance sought by the Organization.

The Board finds that there is no Agreement support for allowing mileage from an employee's residence to his headquarters point. The Board notes that the claim asked for mileage because an Unjust Treatment Hearing was not held to resolve the dispute. Because the Claimant has been again allowed to use the company vehicle, the Board finds that the dispute has been resolved. Beyond the requested payment for mileage that has been denied, there is nothing left for the Board to resolve.

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 25th day of October 2006.