

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37973
Docket No. SG-37447
06-3-02-3-482

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

Claim on behalf of D. E. Beck, for three hours at his time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rules 13, 15, 70 and 80, when it required the Claimant to leave his company vehicle at his headquarters, then refused to provide him transportation to his headquarters to retrieve the vehicle for a trouble call at CPA 155 on May 6, 2001, on the Claimant's assigned territory. Carrier compounded the violation by calling a junior employee and denying the Claimant the opportunity to perform this work. Carrier's File No. 1277723. General Chairman's File No. N13 15 70-206. BRS File Case No. 12083-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.

This is another in a series of cases involving Claimant D. E. Beck and whether he is allowed to take a company vehicle to his residence to commute to his headquarters. In the other cases, the Organization sought mileage expenses for the Claimant's commute between his home and his headquarters. The present claim dated June 14, 2001 alleged that the Claimant was entitled to three hours' pay at the time and one-half rate because the Carrier allowed a junior employee to take an after-hours trouble call.

The record reveals that on May 6, 2001, at 1:00 P.M. the Signal Operations Center (SOC) in Omaha, Nebraska, called the Claimant for trouble at the CP 155 electric switch machine. The Claimant advised that he did not have transportation to work and requested transportation from his home to his headquarters. The Carrier declined and called the next Maintainer in seniority on the list. The record further showed this was the second call at this location within three hours of each other. The Claimant responded to the first call, but allegedly could not respond to the second call because another family member was using his personal automobile.

The Organization in its Submission focused on three positions. First, it stated that the Carrier denied 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 stated that by not allowing an Unjust Treatment Hearing the Carrier violated Rule 70. Its second position was that it is past practice to allow Signal Maintainers to take their company vehicles to their place of residence when they remain available for trouble calls. Finally, the Organization argued that the Carrier bypassed the Claimant and used a junior employee to perform the work.

The Carrier noted that there is no dispute that it did in fact call the Claimant and offered him the opportunity to take the call and the Claimant declined due to lack of transportation. The Carrier argued that the Organization failed to cite any Agreement provisions that require the Carrier to provide employees transportation from their home to their headquarters. It also stated that there is no Agreement support for the proposition that the Carrier is required to allow employees to take assigned company vehicles home. The Carrier concluded that the Unjust Treatment

Hearing process cannot be used to circumvent the collective bargaining process and obtain what the Agreement does not currently provide.

The Board finds that the initial appeal was based on the fact that a junior employee was allowed to work instead of the Claimant. It is undisputed that the Claimant was called to work and declined to accept the assignment due to lack of transportation. Therefore, Rule 13 of the Agreement was not violated. The Organization also failed to meet its burden to prove that the Carrier is required to provide transportation from an employee's residence to his place of work. It also did not prove that the Carrier must allow employees to take assigned company vehicles home for the purpose of answering emergency calls. While the Claimant may have been entitled to an Unjust Treatment Hearing, the Board can find no Agreement support for the requested remedy.

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.