

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38008
Docket No. MW-37102
06-3-01-3-680

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it scheduled and held an unjust treatment hearing for Mr. S. L. Siegel on March 13, 1998 at Vancouver, Washington instead of at his headquarters at Sandpoint, Idaho (System File S-P-639-O/MWB-98-07-06AB BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. L. Siegel shall now be compensated for two (2) days' pay and he shall be reimbursed for seven hundred (700) miles of mileage expense, fifty dollars (\$50.00) lodging expense and meal expense.”

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.

As background, the Claimant was disqualified as a Group 3 Machine Operator on System Region Gang SC-30, headquarters Vancouver, Washington, effective February 20, 1998. As per the Agreement, after disqualification the Claimant had to return to his former Sectionman position headquartered at Sandpoint, Idaho. The Carrier received a request dated February 23, 1998, from the Claimant requesting an Unjust Treatment Hearing. On March 6 the Carrier granted the Unjust Treatment Hearing to be held on March 13, 1998 at the Roadmaster's office in Vancouver, Washington.

This is a contract interpretation dispute involving a number of Rules, but most importantly, that part of Rule 40C which states:

"Investigation shall be held, as far as practicable, at the headquarters of the employe involved."

The Organization argues that the Claimant's headquarters was Sandpoint, Idaho. After disqualification, he was ordered to his former position at Sandpoint, Idaho, by the Carrier. The Organization argues that the Carrier violated the Rule, supra, when it scheduled and held the Unjust Treatment Hearing 700 miles away from the "headquarters of the employe involved." The claim at bar is proper in that the Claimant lost wages, endured two days of travel, an overnight stay, and meal expense to attend.

The Organization maintains that the language requires the Carrier to hold the Unjust Treatment Hearing "as far as practicable" at the employee's headquarters. The Claimant was not headquartered at Vancouver, and moreover, "the Carrier directed him to attend the hearing at a location, other than his headquarters point." Because the Carrier directed him to attend, it is responsible for the Claimant's losses. The Organization also argues that the Carrier cannot schedule an Unjust Treatment Hearing, creating an ". . . impracticable . . ." situation for the Claimant to attend.

As such, the Organization argues that the Carrier violated the Rule and has been unreasonable in its actions against the Claimant. Because it was practicable for the Carrier to schedule the Unjust Treatment Hearing in Sandpoint, Idaho, as required by the Agreement, its failure to do so violated the Rule.

The Carrier denies any violation. It maintains on the property several arguments that support its position that it properly followed the Rule. The Carrier notes that it did not request the Unjust Treatment Hearing, the Claimant did. It further argues that the Carrier did not require the Claimant to travel to the Unjust Treatment Hearing, but held it because the Claimant requested it.

The Carrier further maintains that the language of the Rule does not require the Carrier to hold the Unjust Treatment Hearing at the headquarters of the involved employee. Nor is there any language in Rule 40C which states that the Unjust Treatment Hearing must avoid "undue expense" to the employee. The Carrier points out that Rule 40C states that it will be held at the headquarters of the employee involved "as far as practicable," and that was the case in this instant dispute. The Carrier contended:

"The unjust treatment hearing was held at Vancouver, Washington because that is where all the witnesses and necessary parties were located on the date of the hearing; it was not practicable to move every other party to the Claimant."

The Board reviewed the instant case and studied the language. The key word involved in this Rule interpretation is "practicable." Practicable is that which is feasible within practice, it is not that which is possible. In the Board's view, practicable is that which is based on the facts of the case, not hypothetical speculation. In this case, the Carrier stated that due to the facts, wherein the Claimant at the time of the disqualification was working Region Gang SC-30 in the Vancouver, Washington, area, its headquarters point, a point where all the witnesses and parties were located, "it was not practicable to move every other party to the Claimant." The Organization thereafter had to assume its burden to demonstrate fault with the Carrier's response. It did not do so. The Organization provided no evidence or argument that the Carrier's refutation lacked substance. Nor did it provide substantial additional proof of a violation of Rule 40C. As such, the Board must deny the claim.

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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.