

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39313
Docket No. SG-39208
08-3-NRAB-00003-050474
(05-3-474)

The Third Division consisted of the regular members and in addition Referee Joan Parker 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.

Claim on behalf of M. P. Miller for \$360.00 in travel allowance, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 36 and 80, when it failed to compensate the Claimant for his travel allowance when he traveled from Cheyenne, Wyoming, to Germantown, Wisconsin on July 23, 2004. Carrier’s File No. 1409050. General Chairman’s File No. N 36 484. BRS File Case No. 13254-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.

In early July 2004, Claimant M. P. Miller was assigned to Zone Gang 2686. He bid on a bulletined position on Zone Gang 8616, and was awarded the position on July 9, 2004. The Claimant lived in Cheyenne, Wyoming. Gang 8616 was located in Germantown, Wisconsin. The Claimant was released from his Gang 2686 position on July 12, 2004. Gang 8616 had elected by majority to work eight days on and six days off. The Claimant apparently traveled to Germantown on July 23, 2004, and reported for work on Gang 8616 on July 24. Gang 8616's current work cycle at that time had begun July 20, 2004. The Carrier declined to compensate the Claimant for his travel mileage under Rule 36 of the parties' Agreement.

Provisions in the parties' Agreement pertinent to the instant matter are as follows:

"Rule 5 – 40-Hour Work Week

H. Beginning of Work Week

The term 'work week', for regularly assigned employees, will mean a week beginning on the first day on which the assignment is bulletined to work.

* * *

J. Accumulation of Rest Days

1. Members of Signal Gangs may, by majority, elect to have their hours of assignment and work days established to work . . . eight (8) ten (10) hour consecutive workdays and accumulate six (6) consecutive rest days . . . consistent with the requirement of the service or work hours of other gangs and subject to management approval. . . .

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 Carrier will give employees notice of work schedules and locations . . . so they can plan their travel.

Rule 54 – Accepting Positions Under Seniority Rights

Employees accepting positions in the exercise of their seniority rights will do so without causing expense to the railroad. Subject to state and federal regulations, they will be allowed free transportation for themselves, dependent members of their families, and their household effects. This privilege need not be granted more than once in a twelve (12) month period unless meritorious reason can be shown.

Rule 80 – Loss of Earnings

An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss.”

The Organization filed a claim on the Claimant’s behalf on August 24, which the Carrier denied on October 6, 2004. The parties exchanged additional correspondence and discussed the matter in conference. Having failed to resolve the matter, the parties submitted it to the Board for final and binding resolution.

The Organization contends that the Carrier violated Rules 5, 36 and 80 of the parties’ Agreement by refusing to compensate the Claimant for the mileage he traveled from his home in Cheyenne, Wyoming, to Gang 8616’s location in

Germantown, Wisconsin. According to the Organization, Rule 36 requires the Carrier to pay the Claimant such compensation in clear and unambiguous language. According to the Organization, the Carrier's reliance on Rule 54 in denying the Claimant Rule 36 compensation is misplaced, and under the Carrier's interpretation of Rule 54 the Carrier could argue it was not required to compensate an employee falling under the Rule at all. The Claimant seeks not expenses, but an entitlement afforded to zone gang employees under Rule 36, the Organization argues. Moreover, when a job is bulletined and when an employee's transfer to a new assignment will occur is within the control of the Carrier, the Organization asserts, so that the day on which the employee reports to the new assignment is in the Carrier's control as well. The Organization argues that the Claimant reported for his new assignment at the beginning of his work period, and therefore should be compensated under Rule 36.

After a thorough review of the record, the Board first finds no procedural errors in the record. The Board further finds that it must reject the Organization's position on the merits, as well. The Organization, in its reliance on Rule 36, is applying only part of the Rule's plain language. The Organization ignores Rule 36's language that employees receive compensation for miles traveled from home to work "at the beginning and end of each work period" (Emphasis added). Moreover, paragraph H of Rule 5 expressly provides that the term "work week" (or, logically, "work period" for gangs such as Gang 8616 that have elected under paragraph J a work period different than the standard 40-hour workweek) is a week "beginning on the first day on which the assignment is bulletined to work." The work period does not under the language of the parties' Agreement begin whenever an employee reports for his assignment. It begins when the gang's workweek or period begins. The Claimant reported for work with Gang 8616 on July 24, 2004, which was in the middle of the gang's work period, which had begun on July 20. He therefore is not entitled to mileage compensation for travel "at the beginning and end" of the work period under Rule 36's clear and unambiguous language. There is no provision in Rule 36 for such compensation for an employee who travels in the middle of the work period.

Furthermore, the Claimant obtained his position on Gang 8616 through bidding on a bulletin effective July 9, 2004. Rule 54 of the parties' Agreement

specifically states that “employees accepting positions in the exercise of seniority rights will do so without causing expense to the railroad. . . .” Rule 54 provides that if such an employee transfers to a new location, their family and household effects will be transported for free once in twelve months. That is not the Claimant’s situation. The Claimant is seeking reimbursement for travel expenses to which he is not entitled under Rule 36 of the parties’ Agreement, a reimbursement clearly disallowed under Rule 54. While the Organization argued that the Carrier prevented the Claimant from arriving at the start of a work period by holding him on his old assignment until July 12, 2004, the Carrier persuasively demonstrated that even if the Claimant had been released on July 9, the date he was awarded the assignment on which he had bid, and had left that day for Germantown, Wisconsin, he still would have arrived in the middle of Gang 8616’s work period, which began July 7. His next opportunity to report at the start of a work period - and thus be entitled to the mileage compensation sought - would have been to travel in time to report on July 20. The Claimant did not do so. Based upon the facts as established by the record, the Board must deny the claim.

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 29th day of September 2008.