Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39327
Docket No. SG-38878
NRAB-00003-050337
(05-3-337)

The Third Division consisted of the regular members and in addition Referee Robert E. Peterson 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 Railroad:

Claim on behalf of S. A. Eckstrom for 16.5 hours at the straight time rate of pay, plus skill differential, $18.41 for meal expense and $108.00 in travel expense, account Carrier violated the current Signalmen's Agreement, particularly Rules 5, 36 and 68, when it dismissed the Claimant from his assignment on April 19, 2004 after working for three and one-half hours, the Claimant was not allowed to work all day (10 hrs) on April 20, 2004. Carrier's File No. 1399856. General Chairman's File No. N 36 68 450. BRS File Case No. 13202-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.

Study of the record shows that when it was subsequently determined that the Claimant had been improperly removed from service, an action that necessitated the Claimant return to his place of residence one day prior to the end of his workweek, the Carrier compensated the Claimant for all but the aforementioned $18.41 meal expense aspect of the claim.

The Claimant requested $8.56 for lunch and $9.85 for dinner (a total of $18.41) offering, among other things, that both meals were taken while traveling more than 300 miles to his home after being removed from service at his work location.

The Organization maintains that the Claimant is entitled to the meal expense as claimed under current Rules, practices and policies. It also submits that the Claimant's expenses were detailed in writing to the Foreman in the same manner as with all other employees; the requested amounts for both meals are not excessive, nor were they deemed to be excessive by the Carrier during the handling of the claim on the property.

In denial of the requested meal expenses, the Carrier contends no proof was provided of the Claimant having incurred the expenses alleged, nor was it shown that any meal expense was necessary or proper.

In this latter regard, the Carrier argues that because the Claimant was released from service after three and one-half hours on duty, he could have driven from the work location to his residence in five hours without any "necessity" of additional meals.

Rule 36, Traveling Gang Work, of the Agreement reads, in pertinent part, as follows:

> "Zone gang employees will be reimbursed for actual and necessary expenses (lodging and meals)."

As concerns application of Rule 36, the Organization submits, without record refutation, that the Carrier's existing practices and policies do not require receipts for meal expenses under $10.00. Further, the Organization contends there is no written Rule requiring employees to turn in a receipt for all meals, except for the Carrier's arbitrary policy requiring receipts for any meal over $10.00. Thus, the Organization asserts that because it is clear that the amounts claimed did not exceed the Carrier's arbitrary threshold that would require a receipt, the Claimant is being subjected to disparate treatment in a denial of the claimed meal expenses.

It being undisputed that the Claimant was wrongly removed from service, and it being evident that the Claimant had to travel a considerable distance to return home, it will be the decision of the Board that he is entitled to the meal expenses as claimed in application of Rule 36 and existing practices and policies. And, as concerns the absence of any receipts for both claimed meal expenses, the Board is persuaded from the record that because both the lunch and evening expenses were less than $10.00, no receipts were required. In reaching this decision the Board also finds lacking in merit the Carrier's unsubstantiated assertion that the Claimant could have driven home without stopping to eat. We say this because it remains highly speculative as to the amount of time it would take to drive some 300 miles without knowing the condition of, among other things, the vehicle being driven, type of roads traversed, authorized speed limits, traffic delays, and weather. Moreover, it seems to the Board that it must be recognized that because the Claimant was removed from service 3-1/2 hours into the work day that at that time it was already close to a lunch-time meal break. The Claimant had to travel 300 miles. If he averaged 50 mph, it would still take six hours to reach home, meaning his whole day was at least 9-1/2 hours, or close to the 10-hour work day for which the claimed meal allowances are allowed.

## 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 29th day of September 2008.