

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39857
Docket No. SG-38435
09-3-NRAB-00003-040387
(04-3-387)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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 W. S. Dormann, who is an Assistant Signalman, for 8 hours at the straight time rate of pay for each day claimed, account Carrier violated the current Signalman’s Agreement, particularly Appendix S, and Rules 12, 18, 19, 38, 69, 75 and 80, when it refused to pay the Claimant for each time he spent traveling to his work location from his original headquarters location, and for each return trip after the close of his shift on the final day of the Claimant’s work sessions. This is a continuing claim until such time the Claimant no longer accrues travel time or the Claimant is promoted to a class 1 employee. Carrier’s File No. 1369386. General Chairman’s File No. N apx S 342. BRS File Case No. 12937 - 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 in this case is W. S. Dormann, who at the time this claim arose, was an Assistant Signalman assigned to Zone 1, Signal Gang 2686. The Claimant was assigned to work ten hour days, with eight days on and six days off. Signal Gang 2686 is an "on-line" mobile gang with no fixed headquarters. The Claimant has been assigned to Zone Gang 2686 since October 5, 2000. As of July 1, 2003, the Claimant completed the final phase of his apprenticeship under Appendix S and was promoted to a Class 1 Signalman on Zone Gang 2686.

During the Claimant's assignment to Zone Gang 2686 (October 5, 2000 through September 8, 2003) he along with all other members of Zone Gang 2686, were entitled to and allowed compensation based on Rule 36, which provides for actual and necessary lodging and meal expenses. In addition, Rule 36 provides that employees will receive \$9.00 for every 25 miles traveled from home to work at the beginning and end of each work period.

In a letter dated June 6, 2003, the Organization filed a claim on behalf of the Claimant contending that the Carrier violated Appendix S, and Rules 12, 18, 19, 38, 69, 75 and 80 when it refused to pay the Claimant for each time he spent traveling to his work location from his original location in Lincoln, Nebraska, to his work location in Cheyenne, Wyoming, and for each return trip after the close of his shift on the last day of the work sessions. The claim requested eight hours pay at the Assistant Signalman's straight time rate of pay for each day enumerated in the claim.

The issue in this case is whether in addition to the \$9.00 per 25 miles that the Claimant received for travel from his home in Lincoln, Nebraska, to the work site in

Cheyenne, Wyoming, the Claimant is entitled to his straight time rate of pay for his travel time.

Rule 36 - Traveling Gang Work reads, in relevant part, as follows:

The territory of the Union Pacific Railroad coming under the jurisdiction of this collective bargaining agreement will be divided into four work zones, as per Rule 44:

Zone 1: Territory covered by seniority districts 1, 2, 3 and 4

*** * ***

If a gang is to be a mobile gang, it will fall under this Rule, unless it is a per diem gang established under Appendix J.

Employees on zone gangs will work a schedule of either eight (8) days on and six (6) days off. . . .

*** * ***

For employees on a zone gang, time begins and ends at the common lodging facility.

*** * ***

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, except in emergency circumstances, so they can plan their travel."

The Organization contends that the Agreement was violated when the Carrier failed to compensate the Claimant for his actual travel time from his home in Lincoln, Nebraska, to his work location in Cheyenne, Wyoming. According to the Organization, the Carrier violated Appendix S, Rules 12, 18, 19, 38, 69, 75 and 80 when it failed to compensate the Claimant at his straight time rate of pay for this travel.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. It contends that because the Claimant was part of a zone gang, he received the proper compensation of \$9.00 for each 25 miles traveled. According to Rule 36, he is entitled to no further compensation. While the Organization characterized Lincoln, Nebraska, as the Claimant's headquarters, this is not the case. Lincoln, Nebraska, is the Claimant's home and, as such, the Carrier properly compensated the Claimant for his travel.

After a review of all facts and circumstances in this case, the Board finds in favor of the Carrier. As noted above, the burden of proof is on the Organization to show that the Claimant was not properly compensated for his travel time. We find that the Organization has been unable to meet that burden of proof. As a member of Zone Gang 2686, we find that the Claimant was properly compensated.

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 31st day of July 2009.