

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40479
Docket No. SG-40163
10-3-NRAB-00003-070398
(07-3-398)

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 B. Kuchynski, for 37 hours at his half-time rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 33 and 80, when it required the Claimant to work off of his assigned district and then failed to compensate him at the time and one-half rate of pay on April 17, 18, 25 and 26, 2006. Carrier compounded this violation by failing to comply with the time limit provisions of Rule 69. Carrier’s File No. 1450056. General Chairman’s File No. UPGCW-33-1258. BRS File Case No. 13743-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.

At the time this dispute arose, Claimant B. Kuchynski was assigned to a Signalman position on Gang 2064, headquartered at Eugene, Oregon. On or about April 18, 2006, the Carrier flew the Claimant to Las Vegas, Nevada, to pick up a Carrier boom truck and drive it back to Eugene. On April 25, 2006 he was flown to a Salt Lake City, Utah, Chevrolet dealership, where he picked up a hi-rail truck, drove it to the Carrier's Salt Lake City rail yard and loaded tools into the truck. The following day, the Claimant drove the truck back to his headquarters in Eugene, Oregon.

On May 1, 2006, the Organization filed the instant claim contending that the Claimant had erroneously been paid straight time for the hours he worked "off district" and, therefore, that the Carrier had violated Rule 33 of the Agreement. Rule 33 reads, in pertinent part, as follows:

"If a headquartered gang is performing work off of its district, the employees of that gang will be paid at the one and one-half rate for that work except in those instances where double-time pay would be appropriate after 16 hours."

In the Claimant's case, the Organization insisted, he was due a total of 37 hours at the one-half rate of pay in order to be properly compensated for those hours that he worked "off district."

The Carrier denied the claim on June 22, 2006 on grounds that it had not violated the Agreement. It contended that the Claimant was sent to Las Vegas and Salt Lake City to retrieve two Carrier trucks, and at no time performed scope covered work. In its July 26, 2006 appeal, the Organization reiterated its position that Rule 33 applied in this circumstance and that the Carrier had violated that Rule. That appeal was denied on September 27, 2006, and the claim was subsequently progressed according to the parties' Agreement, including conference on the property on December 6, 2006, after which it remained in dispute.

The Carrier contends that, in flying to the two cities in question and driving the trucks back to the Claimant's headquarters in Eugene, the Claimant was not performing signal work. That narrow view belies the fact that the Claimant was

sent as part of Signal Gang 2064 to retrieve trucks to be used by his gang once they were returned to Eugene. Accordingly, there can be no reasonable quarrel that what he was doing in that time was, in fact, his work assignment while on Signal Gang 2064. There can also be no reasonable quarrel that during the time he was retrieving the trucks, he was, for the most part "off district." Rule 33 specifies that employees of a gang that "is performing work off of its district . . . will be paid at the one and one-half rate for that work."

Clearly the Claimant was "an employee of a gang" and equally clearly he was performing work "off of [his gang's] district." Thus, he is entitled to be paid in accordance with the provisions of Rule 33.

AWARD

Claim sustained.

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 14th day of May 2010.