

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40525
Docket No. SG-39578
09-3-NRAB-00003-060099
(06-3-99)**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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. F. Lester, N. J. MacLeod and J. A. Rand, for payment of the expenses submitted for October, November and December 2004, account Carrier violated the current Signalmen’s Agreement, particularly Rules 33, 36 and 37, when Carrier denied the Claimants’ expenses, withheld the entire amounts and failed to provide their work schedules in advance in order to allow them to plan their travel. Carrier’s File No. 1417944. General Chairman’s File No. UPGCW-37-1086. BRS File Case No. 13448-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 claim of the Organization is that the Carrier violated Rules 33, 36 and 37 of the Agreement. The substance of the claim is that the Claimants submitted expenses for October, November, and December 2004, which were disallowed for full and proper reimbursement. The Organization argues that the Claimants (1) were not provided advance notice regarding their work schedules (2) were not properly reimbursed for airfare flight changes required (3) were not compensated for hotel charges and (4) were not properly reimbursed for meals.

The Organization argues that the Carrier changed the Claimants' work schedules with a 12 hour non-emergency notification. The Organization notes that the Gang had been told that they would be in New Mexico from October 2004 until the end of the first quarter of 2005, or possibly a year. The Claimants properly planned in advance for travel. Receipts indicate that the Claimants planned to travel back to their homes from New Mexico on weekends with cheaper advanced purchase, non-refundable airline tickets.

The Claimants had only shortly arrived in New Mexico when on November 11, 2004, claiming an emergency, they were told to leave. The Claimants allegedly incurred expenses in violation of Rule 36 due to the Carrier's failure to properly provide advance work schedules. The Organization maintains that the so-called emergency alleged to have occurred on September 26, 2004 is not applicable to the Claimants' planned work. The Carrier should pay the submitted costs, including unusable tickets.

The Carrier states that no violation occurred and that the Claimants were properly reimbursed. They were members of Zone Signal Gang 8253 and were notified in writing as to the non-reimbursable items they submitted, as per Rule 37. They were not reimbursed for non-refundable airline tickets they purchased in advance, or for unused shuttle bus tickets, airport parking, and other personal and associated expenses. Nor did the Carrier violate Rule 36, as it properly paid the Claimants for the travel between their homes and work locations. The Carrier is not required to present any advance notice of travel because situations change. In this case, there were a number of unscheduled changes to projects, but in addition there was an emergency on September 26, 2004 when a train derailed. The Claimants were properly compensated under Rule 36. They were properly compensated for meals and lodging under Rule 33 which states "... the employees will be reimbursed for the actual and necessary expense thereof."

The Board carefully reviewed the Rules in dispute. The Claimants were denied expense charges as not being "actual and necessary" expenses. The Board reviewed the pages of documents and receipts. Central to this issue are a large number of receipts and claims for reimbursement submitted in three different categories: travel, hotels and meals. As for travel, the issues raised by the Organization pertain to planning and reimbursement, payable under Rule 36 which states, in pertinent part:

"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."

As for planning, the Carrier is to give employees notice of work schedules and the Carrier did so. There is no proof in this record that the Claimants were instructed that they would work for a year or any particular guaranteed period. Manager Signal Construction Farrow denied the allegation on the property, stating that Gang 8253 was on loan and depending on other gangs "COULD possibly be there for a year." He indicated numerous things changed, including the derailment which "destroyed the entire control point including the control cabin, the turnout/power switch, all the wayside signals and an electric lock on a house track."

The Board finds that Rule 36, supra, entitled the Claimants to the \$9.00 per 25 miles travel allowance. While the Claimants can purchase non-refundable tickets, the Carrier is not responsible for these or any other associated transportation expenses. The Carrier's notice of work schedule in this record and the change that occurred thereafter was proper. The Claimants transportation costs are not the responsibility of the Carrier. Third Division Award 39513 correctly decided this issue. Transportation expenses related to the claim for all Claimants are rejected.

As for the non-reimbursed hotel bills in this claim, it appears to the Board to be moot. The Carrier denied the hotel bills, but the denial dated January 24, 2005 from Manager Signal Construction Farrow states that they were removed as submitted because: "Lodging expenses in the amount of \$219.71 account they were previously submitted via GMS on your payroll." It appears that all Claimants were

reimbursed. The Board denies lodging in this claim to all of the Claimants, unless they were not reimbursed.

This leaves only the disputed meals. Although somewhat difficult to follow, the Board can understand the Carrier's rejections. However, the Claimants are due reimbursement for reasonable and necessary expenses for meals. Claimant MacLeod, for example, submitted a dinner expense for nine days that is in the \$9.00 to \$10.00 range, except on three of the nine days when he submitted a reimbursement request for \$24.54, \$24.24, and \$26.25 without explanation or detail. Similarly, the Carrier clearly rejected MacLeod's October 18, 2004 dinner request for \$35.27 and the next night for \$33.19, instead of the usual \$9.00 to \$10.00 range he paid on most other nights. The rejections indicated that the dinners, "may be actual but do not meet the necessary [criteria]." Macleod indicated that he had, "no real expectations that it will be paid in a timely manner." As best the Board can determine, MacLeod has not been reimbursed.

The Board orders the Carrier to reimburse the Claimants for actual detailed receipts indicating what food was directly purchased by them for the rejected reimbursed amounts. Should the Claimants have no detailed timely receipts documenting what was actual and necessary, they are to be reimbursed \$10.00 per rejected dinner reimbursement.

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 15th day of June 2010.