

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41631
Docket No. SG-41713
13-3-NRAB-00003-110353**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 D. R. Holman, for \$396.00 in mileage reimbursement, account Carrier violated Agreement Rules 36 and 80 when it did not compensate the Claimant for traveling from his home to work at the beginning of the work cycle and back home at the end of the work cycle. General Chairman’s File No. S-36,80-1072. BRS File Case No. 14603-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.

There is no dispute on the following facts. The Claimant exercised his seniority to bump onto Zone Signal Gang 4590. On May 4, 2010, the Claimant drove from his residence in Warrensburg, Missouri, to the location where the Gang was working in Longview, Texas. The Claimant was on time and began working with the Gang until the end of his work cycle on May 8, 2010.

The instant dispute stems from the fact that the Carrier refused payment of the travel allowance for the driving distance from the Claimant's home to the work place. The Carrier contended that he was due no compensation under the provisions of Rule 36, because the Claimant was not officially assigned to the Gang when he traveled. Because he was making a displacement pursuant to Rule 58 and his travel was not a part of an assignment to the gang, the provisions of Rule 36 were inapplicable. The Claimant was not entitled to travel allowance. The Carrier asserts that the issue was settled by Award 8 of Public Law Board No. 6459.

The Organization asserts the merit of this claim pointing to the fact that the Claimant submitted a statement of fact. That statement indicates clearly that the Claimant was notified on May 3, 2010 that he was being bumped from his position by Signaller Walker. The Claimant thereafter notified Signaller Foster that he would be bumped from his position on Gang 4590 the next day. Subsequently, the Claimant notified the Carrier in accordance with the Rule that he would begin work on May 4, 2010 and was placed on the gang. The Claimant drove from his home and as he stated, he worked "there at start of shift on the first day of the work cycle." The Organization argues that Rule 36 is very clear. It states, in pertinent part:

"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."

According to the Organization, the Claimant was assigned to Gang 4590 prior to the start of the regular work period: 7:00 A.M., Tuesday, May 4, 2010. The Claimant drove from his home and began work at the required time, as did all the rest

of the employees. Pursuant to Rule 36, the Claimant is entitled to reimbursement for travel at the beginning of the work period, supra. Conversely, the Carrier asserts that (1) the Claimant's status is different from other gang members because his drive was not a part of his assignment (2) he did not begin working and was not assigned until 7:00 A.M. (3) this issue was decided by Award 8 of Public Law Board 6459 is not accurate. In fact, the same Referee (James Mason) issued a contradictory decision in Award 16 (with a Carrier Member Dissent) of Public Law Board No. 6459. As a result of that decision, the Carrier had to compensate the Claimant under these circumstances and under Rule 36. The Organization maintains that the Claimant is due travel allowance for his drive from home to the gang to work at the beginning of his assignment.

The Board fully read the fact situation at bar. A study of the two cited Awards does not support the Organization's position. Award 16 cited to by the Organization is based on Rule language supporting an employee who exercised his seniority to fill a Zone Gang vacancy. In Award 8 cited by the Carrier the Claimant traveled to a Gang's location in order to exercise seniority displacement rights. On point with this case, the Claimant was displacing an employee to begin work on Gang 4590. Displacement is governed by Rule 58, which states, in pertinent part:

"An employee exercising his displacement rights under this rule must give notice of his intention to displace to the individual being displaced and to Non-Operating Personnel Services, the supervisor and local chairman of the district no later than during regular work hours of the regular work day immediately preceding the date of actual displacement. A displacement is not effective until the employee is physically displaced."

It is the last sentence that is dispositive of the instant claim. Until 7:00 A.M. on May 4, 2010, when the Claimant made his physical displacement, he was neither assigned to nor a member of the gang. Until that displacement occurred in accordance with Rule 58, the Claimant was not under the applicability of Rule 36, which clearly states that the allowance is paid from, the "beginning . . . of each work period." The Claimant did not begin work, was not assigned, and was not governed by Rule 36 travel allowance while he drove from his home to the work location. The Claimant was not under Gang 4590's auspices and "work period" while he traveled. The

Claimant was exercising his displacement rights as he drove to the work location. As stated in Public Law Board No. 6459, Award 8 under the same circumstances, the Claimant “did not qualify for travel mileage allowance at the time he exercised his displacement rights.”

The Board finds no support in the language of the Rules to hold that the Carrier violated the Agreement. Rule 36 does not apply under these circumstances where the Claimant made a displacement to Gang 4590. No travel allowance is applicable. Therefore, the claim must be denied.

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 24th day of April 2013.