

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42243
Docket No. SG-42818
16-3-NRAB-00003-140511**

The Third Division consisted of the regular members and in addition Referee Sidney Moreland 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 R. S. Humphries, for 22 hours at his time and one-half rate of pay, \$13.00 for miles traveled, and a company vehicle provided for traveling to and from work, account Carrier violated the current Signalmen’s Agreement, particularly Rules 13, 61, 65, and Appendix Y, when it required the Claimant park his company vehicle and use public and private transportation to travel to and from work on August 27-28, 2013. Carrier’s File No. 1591871. General Chairman’s File No. UPGCW-APPY-1844. BRS File Case No. 15082-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, a Zone Electronic Technician, ended his shift on August 27, 2013, near El Paso, Texas, and apparently sought to drive his Carrier-assigned truck home to Ontario, California, for his rest days. Instead, the Carrier provided the Claimant with a commercial airline ticket and he flew home the following morning. The Claimant returned to his job venue several days later in the same manner.

The Organization contends that the Claimant should be compensated overtime for the time the Carrier instructed him to stay overnight in the lodging facility and fly home, and also for the time returning, because the Claimant was traveling at the Carrier's behest and responsible for the Carrier's laptop.

The Organization also seeks overtime compensation for the 30 minutes required for the Claimant's son to drive him to the airport for his return flight.

The Organization further contends that because the Claimant was responsible for the Carrier's laptop and "associated items," he was, therefore, "performing service" as outlined in Rule 13. Rule 13 – ROAD SERVICE states, in pertinent part:

- "A. Employees performing service requiring them to leave and return to their home station on the same day (within 24 hours from regular starting time of their assignment) will be paid continuous time exclusive of established meal period from time reporting for duty until released at home station. Straight time will be allowed for all straight time work; overtime for all overtime work, and straight time for all traveling and waiting. Employees riding on or operating track motor cars or trucks or required to be responsible for Company tools and/or materials while traveling will be considered as performing work as referred to in these rules and will be compensated accordingly.**
- B. Employees sent away from home station and held out overnight will be allowed actual time for traveling or waiting during the regular working hours; in addition, travel or waiting time outside of regular hours will be paid for at the straight time rate, until the employee is released from duty at location where suitable eating and sleeping accommodations are available. If meals and lodging are not furnished by the Company, actual**

necessary expenses will be allowed until employee is released at his home station

- C. Time spent in traveling from one work point to another outside of regularly assigned hours or rest day or holiday will be paid for at the straight time rate. Each man will be paid the amount of travel time from one point to another based on the mode of transportation offered by the Carrier, regardless of how any employee actually travels from one point to the other.”

The Carrier asserts that Rule 13 does not govern the Claimant’s travel; rather, Rule 26 governs the Claimant per the clear language of Appendix Y, which states, in pertinent part:

“APPENDIX Y (SIDE LETTER)

. . . Such positions are subject to the provisions of Rule 36-Traveling Gang Work, with the exception that employees occupying these positions will not be entitled to the \$9.00 for twenty-five miles traveled at the beginning and end of each work period when they are provided with a company vehicle” (NOTE: Rule 36, is now Rule 26)

The Carrier further asserts that Rule 26 provides no compensation for rest day travel from the Claimant’s work site location to his home (or vice versa). The Claimant was not held by the Carrier at his lodging facility overnight and he was provided with transportation home in accordance with the travel compensation Rules governing Traveling Gang ET’s. The Carrier finally asserts that there has been no Rule 65 loss of earnings suffered by the Claimant, and the Organization failed to meet its burden of proving otherwise.

The Claimant’s travel and hotel time, which forms the focus of this dispute, is ineligible for Rule 13-A overtime compensation due to the provision requiring the Claimant to leave and return to his home station on the same day, and as such, the Claimant was not involved in a Rule 13-A Road Service situation. However, the provisions of Rule 13-B are not precluded due to the Claimant’s status under Appendix Y. While the Claimant is not entitled to compensation after being released from duty at his hotel, his actual travel time is compensable at the straight time rate.

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 January 2016.