

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42567
Docket No. SG-43237
17-3-NRAB-00003-150512**

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall 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.L. Allen, for \$738.00, account Carrier violated the current Signalmen’s Agreement, particularly Rules 26 and 65, when it refused to compensate him as stipulated in said Rule for traveling from his work location to home at the end of his work period. Carrier’s File No. 1611108. General Chairman’s File No. UPGCW-Rule-26-0180. BRS File Case No. 15267- 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.

This case involves an employee who was displaced part way through a gang work cycle. The issue is whether or not this Claimant is entitled to the travel allowance, provided for in the Collective Bargaining Agreement (CBA), when he travelled home when he was displaced.

The Rules in question are:

“RULE 26 – TRAVELING GANG WORK

The territory of the Union Pacific Railroad coming under the jurisdiction of this collective bargaining agreement will be divided into five work zones, as per Rule 34:

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

Zone 2: Territory covered by seniority districts 5, 6, 7 and 8

Zone 3: Territory covered by seniority districts 9, 10 and 11 Zone 4:

Territory covered by seniority district 12

Zone 5: Territory covered by seniority district 14

If a gang is to be a mobile gang, it will fall under this Rule, unless it is a per diem gang established under Memorandum Agreement July 18, 1997 (See Appendix I).

Employees on zone gangs will work a schedule of either eight (8) days on and six (6) days off or twelve (12) days on and nine (9) days off. It is the intent of the parties to work employees on an eight (8) days on and six (6) days off schedule when possible given the operating requirements of the Carrier. In the event that the Carrier must work zone gangs on an eight (8) days on/six (6) days off schedule on their rest days, the Carrier will guarantee a minimum of four (4) consecutive rest days off between work periods. In the event the Carrier must work zone gangs on a twelve (12) days on/nine (9) days off schedule on their rest days, the Carrier will guarantee a minimum of six (6) consecutive rest days off between work periods. The work schedule of gangs working compressed schedules of either eight (8) days on and six (6) days off or twelve (12) days on and nine (9) days off will, with a majority vote of all members of the gang, commence their work schedule on either a Tuesday or Wednesday. At management's request Zone Gangs, with the unanimous concurrence of the gang members, may elect to accept a work schedule of 4 days on and 3 days off. Such election will not reduce the \$9.00 per 25 mile travel allowance. Consistent with operational needs, Zone Gangs, with the unanimous concurrence of the gang members, may request to work a schedule of 4 days on and 3 days off. Such request will result in the reduction of the

travel allowance to \$4.50 per 25 miles. For employees on a zone gang, time begins and ends at the common lodging facility.

NOTE: As an example, if a zone gang is working eight on and six off and the Carrier works them for fourteen (14) days straight, they will have the first four (4) days of their work week off and paid at straight time (according to the work schedule) and then they complete their work period by working four (4) days then having their six (6) days off. 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. If a mobile unit is moved and employees assigned thereto are not able to move their vehicle during the time the mobile unit is being moved, the employees will be returned to the location of their vehicle at the Company's expense. If an employee stays at the work location on the employee's days off, meal and lodging costs will be paid by the Carrier, not to exceed the allowance the employee would have received for mileage home. If an employee travels to a location other than home during the employee's off days, the employee will receive mileage payment (\$9.00 per 25 miles) for the lesser of the travel to the employee's home or the actual travel incurred. If an employee travels home everyday, the employee will not receive \$9.00 per 25 miles allowance, but will receive the \$15.00 daily incidental expense allowance for each day worked and paid noon meals.

NOTE: It is agreed between the parties that these costs and allowances will be reviewed by the Carrier and Organization at three (3) year intervals.

Zone gangs may be at any location performing any agreement work. Zone gangs performing work on its own zone and on a seniority district where there are involuntarily furloughed employees will be headquartered or abolished at the written request of the General Chairman. Zone gangs will not work across zone lines if employees are involuntarily furloughed in the seniority district where the work is located. If a zone gang is performing work off of its zone, the

employees of that gang will receive one and onehalf time pay, up until the employees of the gang qualify for double-time, at which time they will be paid at the double-time rate.

RULE 65 – LOSS OF EARNINGS

An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss.

The issue turns on the definition of work cycle. Is it the work cycle of the gang, or of the individual employee within the gang?

When viewing the language of the agreement as a whole, this Board finds that the work cycle is that of the gang, not the individual. There are many examples in the language that support this interpretation. “Employees on zone gangs will work a schedule of either . . . In the event that the Carrier must work zone gangs on an eight (8) days on/six (6) days off schedule on their rest days, . . . In the event the Carrier must work zone gangs on a twelve (12) days on/nine (9) days off schedule on their rest days . . . The work schedule of gangs working compressed schedules of either eight (8) days on and six (6) days off or twelve (12) days on and nine (9) days off will, with a majority vote of all members of the gang, commence their work schedule on either a Tuesday or Wednesday. At management’s request Zone Gangs, with the unanimous concurrence of the gang members, may elect to accept a work schedule of 4 days on and 3 days off. Such election will not reduce the \$9.00 per 25 mile travel allowance. Consistent with operational needs, Zone Gangs, with the unanimous concurrence of the gang members, may request to work a schedule of 4 days on and 3 days off. Such request will result in the reduction of the travel allowance to \$4.50 per 25 miles. For employees on a zone gang, time begins and ends at the common lodging facility.”

All the language speaks to the work cycle of the gang. In a number of instances, the gang schedule can be changed with the unanimous consent of all members. This is not language of the individual. It is language of the gang, at all times.

This result is also consistent with many of the previous Public Law Board Awards and Awards of this Adjustment Board. While arbitration boards in this industry are not, as suggested by the Carrier, bound by the concept of stare decisis, it is good industrial relations practice to come to similar results as prior well-reasoned awards of a similar nature. An example of such Awards placed before this tribunal includes Third Division

Award 40522, which involved another employee displaced during the work cycle. That claim for return mileage to home was likewise denied.

There is also no evidence before the Board that the Claimant attempted to exercise his seniority to displace a more junior member of the same gang, thus obviating the need for his claim. Similarly, as argued by the Carrier, he could, perhaps, have exercised seniority to another, closer gang, thus reducing his expenses. Once again, the record is devoid of any such information.

As mentioned in other Awards, the drafters of the language in this agreement could have chosen to carve out an exception for the displaced employee who must travel upon displacement. Or the employee who, as in one quoted Award, went home for a funeral mid-cycle. Likewise, the claim for travel expenses of this employee was denied at arbitration. One can imagine many instances where the employee feels no option but to leave the gang mid-cycle. The drafters of the CBA language are very experienced labor relations negotiators. They did not make any such exceptions. The Board is bound by the plain language contained in the CBA.

Thus, on balance, the Board finds that the Organization failed to meet its burden of proof.

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 6th day of March 2017.