

PUBLIC LAW BOARD NO. 6459
BROTHERHOOD OF RAILROAD SIGNALMEN
VS.
UNION PACIFIC RAILROAD COMPANY

Award No. 8
Case No. 8

QUESTION AT ISSUE:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of J.E. Weaver for payment of \$99.00. Account Carrier violated the current Signalmen's Agreement, particularly Rule 36, when on April 1, 2000 Carrier refused to pay the Claimant for travel pay incurred while working as a Zone Gang employee. Carrier's File No. 1227823. BRS File Case No. 11534-UP."

FINDINGS:

The fact situation in this case is reasonably clear and undisputed. The Claimant was assigned as a member of a Zone Signal Gang. We are not told where this Zone Gang was headquartered or where the Claimant maintained his home. Claimant requested and was granted a medical leave of absence beginning January 9, 2000. While on medical leave of absence, his Zone Gang was abolished. Claimant was released from his medical leave of absence effective April 1, 2000. Upon return to service, Claimant exercised his displacement rights to another Zone Gang. Again we are not told where this Zone Gang was headquartered. However, we find from the case record that, on Claimant's behalf, a statement was made by the Organization that he "... drove a total of 280 miles to work"¹ and that he should be allowed a payment of \$99.00 under the provisions of Rule 36. This claim was denied by the Carrier and was subsequently handled in the usual on-property manner without resolution. The dispute is now properly before this Board for final determination.

During the on-property progression of the dispute, Rules 36, 54 and 58 of the Collective Bargaining Agreement were cited and either relied upon for

¹ Organization's Exhibit #1/Carrier's Exhibit #B-1.

support or disputed as non-applicable to this case. The pertinent language of these Rules is as follows:

"RULE 36 - TRAVELING GANG WORK

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."

"RULE 54- ACCEPTING POSITIONS UNDER SENIORITY RIGHTS

Employees accepting positions in the exercise of their seniority rights will do so without causing expense to the railroad. Subject to state and federal regulations, they will be allowed free transportation for themselves, dependent members of their families, and their household effects. This privilege need not be granted more than once in a twelve (12) month period unless meritorious reason can be shown."

"RULE 58 - DISPLACEMENTS

A. When force is reduced or positions abolished, an employee affected may, within five (5) calendar days from date of displacement (or if displaced while on vacation or leave of absence, within five (5) calendar days from date of return), displace any employee his junior of the same seniority class. If there is no such junior employee of the same seniority class, he may displace any employee his junior in the next lower seniority class. An employee so displaced may exercise his seniority rights in the same manner. Unless satisfactory evidence of being unavoidably detained is provided, failure to exercise seniority as set forth above will cause the employee to forfeit seniority rights, as per Rule 57(f).

B. 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. With the concurrence of management, employees who have been notified of their displacement may move prior to a physical displacement in order to avoid the loss of time."

It is the Organization's argument that the language of Rule 36 supports their position in this instance. They claim that when the Claimant exercised his seniority onto the Zone Gang on April 1, 2000, that date was the beginning of his work period on that Gang. They also argue that there have been other instances where Carrier has paid travel mileage allowances when employees displaced onto Zone Gangs during the work period of the Gangs. Therefore, they claim, these past payments established a practice and reflected the intent of the Rule. The Organization discounts Carrier's reliance on Rules 54 and 58 arguing that Rule 54 has absolutely no relevance to a situation such as exists here and that the Rule 58 language relied on by Carrier has nothing to do with the employee who is making a displacement and, in any event, cannot and does not affect the provisions of Rule 36 relative to payment of travel mileage expenses incurred by the Claimant.

For their part, the Carrier insists that the Claimant was not actually a member of the Zone Gang until his displacement onto the Gang was effectuated as described in Rule 58, i.e., until the employee being displaced was physically displaced. This, Carrier claims, occurred during the regular

work period of the Zone Gang and the travel mileage allowances provided for in Rule 36 apply only at the beginning and end of the assigned work period of the Gang. Carrier insists that if, in fact, some other employees have been erroneously allowed travel mileage allowances, those erroneous payments were not authorized by the Management party empowered to make such payments and cannot supersede the clear and unambiguous language of Rule 36.

The Board has reviewed all of the factual and supportive evidence and arguments which have been submitted and made in this dispute. It is the Board's conclusion that the position of the Carrier is persuasive and is upheld in this instance with one exception.

Carrier's reliance on Rule 54 for support of their position in this case is misplaced. The position of the Organization as it relates to Rule 54 convinces the Board that Rule 54 does not address the issues involved in this case. Therefore, Carrier's reference to and reliance on Rule 54 is rejected.

Carrier's reliance on Rules 58 and 36 are another matter. Rule 58 is a specific Rule which by its language and application establishes that a displacement is not effective until the employee being displaced is physically displaced. The displacement is not effective when the displacing employee gives his/her notice of intention. The clear language of the specific Rule does not so provide nor can such an interpretation logically follow. The single exception to this is found in the last sentence of paragraph B of Rule 58 which allows an employee being displaced to, with Management's concurrence, move prior to a physical displacement taking place in order to avoid loss of time by the displaced employee. That exception is not involved in this dispute.

Here we have a situation in which this Claimant did not effectively become a member of the Zone Gang until the physical displacement occurred. Claimant became a member of the Zone Gang during the regular assigned work period of the Gang. The language of Rule 36 is clear, concise and free of ambiguity. It authorized travel mileage allowances only at the beginning and end of each work period. There is no room for interpretation of this language to mean that the work period of an individual who displaced onto a Zone Gang during an established work period somehow creates a separate work period for the employee making the displacement.

As to the Organization's allegation that prior payments of travel mileage allowances in situations similar to that found in this case, the Carrier denies that any responsible Management official authorized any such payments if, in fact, such payments occurred. It is a well settled principle that allowances made without the knowledge and/or approval of the officer of the Carrier

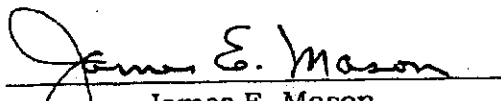
authorized to make and interpret agreements have no affect on the rules of the agreements. It is also a well settled principle that past practice cannot negate or change the clear and unambiguous language of the negotiated agreement. The Organization's contention in this regard is rejected.

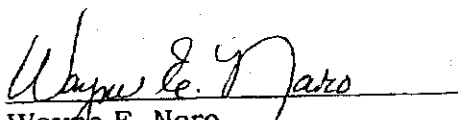
In the fact situation which exists in this case, Claimant was not working as a Zone Gang employee when he traveled to the Gang's location to exercise his displacement rights. His displacement onto the Zone Gang on April 1, 2000, did not create a work period for himself as the term "work period" is used in Rule 36. He did not qualify for travel mileage allowance at the time he exercised his displacement rights. Of course, after he exercised his displacement rights onto the Zone Gang, he would be entitled to travel mileage allowance back to his home at the end of the Gang's work period, but that is not what we are dealing with here.

On the basis of the totality of the evidence as found in this case record, the claim as presented is denied.

AWARD

Claim denied.


James E. Mason
Chairman and Neutral Member


Wayne E. Naro
Carrier Member


Charlie A. McGraw
Employee Member

Dated at Palm Coast, Florida this 24th day of March, 2004.