

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39718
Docket No. MW-37652
09-3-NRAB-00003-020747
(02-3-747)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier denied and refused to allow System Gang employee P. L. Palma the per diem allowance for the dates of September 9, 10, 11, 12, 13, 14, 15 and 16, 2001 (System File J-0139-59/1293199).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant P. L. Palma shall now be paid a total of three hundred and eighty-four dollars (\$384.00).**

The Carrier has declined this claim.”

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.

Claimant P. L. Palma was formally assigned to Gang 9052, which works a compressed workweek. His last day worked was September 7 and September 8, 2001 was observed as the Labor Day holiday. Rest days were observed during the period of September 9 through 15. A personal day was granted on September 16 and three days of vacation were taken during the period of September 17 through 19, 2001. According to the Organization, because the dates of September 9 through 15, 2001 were rest days preceding the Claimant's vacation, the Claimant should have been allowed per diem for this period of time.

The Organization submitted a claim contending that the Carrier violated the Agreement by not granting the Claimant per diem allowance for the days preceding his vacation. The Organization requests that the Claimant be granted per diem allowances totaling \$384.00.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier first contends that this matter has previously been resolved by Public Law Board No. 6302, Award 14. Further, the Carrier asserts that the Agreement does not provide for the remedy the Organization has requested.

Rule 39 (e) provides:

"The foregoing per diem allowance will be paid for each day of the calendar week, including rest days, holidays and personal leave days, except it will not be payable for workdays on which the employee is voluntarily absent from service, or for rest days, holidays or personal leave days when the employee is voluntarily absent from service when work is available to him on the workday immediately preceding or the workday immediately following said rest days, holidays or personal leave days. . . ."

In the instant case, the Board cannot find that the Organization has been able to meet its burden of proof to show that the Claimant should have been awarded per diem for the relevant dates. We conclude that this matter has already been resolved by Public Law Board No. 6302, Award 14 decided by Referee Martin Malin. In that case, Referee Malin determined that pursuant to Rule 39, when an employee is voluntarily absent on the workday immediately following rest days, holidays or personal leave days, he is not entitled to the relevant per diem. In the instant case, because we have determined that the Claimant was voluntarily absent during the period of September 17 through 19, 2001, he is not entitled to per diem.

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 26th day of June 2009.