

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31457  
Docket No. MW-31620  
96-3-93-3-645

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to allow weekend per diem allowances for Mr. M.A. Onstot for Saturday, September 28 and Sunday, September 29, 1991 (System File C-92-T072-3/6MWA 92-01-13D).

(2) The Agreement was violated when the Carrier failed and refused to allow weekend per diem allowances for Foreman R.W. Jackson and Group 3 Machine Operators J.S. Volker and R.A. Sharp for Saturday, January 18 and Sunday, January 19, 1992 (System File C-92-T072-10/6MWA 92-05-18).

(3) As a consequence of the violation referred to in Part (1) above, Claimant M.A. Onstot shall be allowed \$29.00 per diem allowance for Saturday, September 28 and \$29.00 per diem allowance for Sunday, September 29, 1991.

(4) As a consequence of the violation referred to in Part (1) above, Claimants R.W. Jackson, J.S. Volker and R.A. Sharp shall each be allowed \$29.00 per diem allowance for Saturday, January 18 and \$29.00 per diem allowance for Sunday, January 19, 1992."

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 waived right of appearance at hearing thereon.

The two claims submitted in this case are identical. Both cases involve employees who were assigned to gangs with mobile headquarters, so called Rule 38 gangs.

Rule 38 requires the Carrier to provide for meals and lodging for mobile gangs or, as an alternative, the employees are paid a per diem allowance in lieu of the Carrier providing the meals and lodging. Rule 38 reads as follows:

"RULE 38. MOBILE HEADQUARTERS (WITH OR WITHOUT  
OUTFIT CARS) - LODGING - MEALS

A. Other than as provided in Rules 37 and 39, the Company shall provide for employees who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in outfit cars, camps, highway trailers, hotels or motels as follows:

(1) If lodging is furnished by the Company, the outfit cars or other lodging furnished shall include bed, mattress, pillow, bed linen, blanket, towels, soap, washing and toilet facilities.

(2) An expense allowance for furnishing and laundering pillows, bed linens, blankets and towels in the amount of thirty (30) cents will be allowed for each day that per diem meal allowance is paid. In the event the Company arranges to furnish and launder pillows, bed linens, blankets and towels, this expense allowance will not apply.

(B) Lodging facilities furnished by the Company shall be adequate for the purpose and maintained in a clean, healthful and sanitary condition.

(C) If lodging is not furnished by the Company the employee shall be paid a lodging allowance of \$10.75 per day.

(D) If the Company provides cooking and eating facilities and pays the salary or salaries of necessary cooks, each employee shall be paid a meal allowance of \$2.50 per day.

(E) If the Company provides cooking and eating facilities but does not furnish and pay the salary or salaries of necessary cooks, each employee shall be paid a meal allowance of \$5.00 per day.

(F) If the employees are required to obtain their meals in restaurants or commissaries, each employee shall be paid a meal allowance of \$7.50 per day.

(G) The foregoing per diem meal and lodging (if applicable) allowance shall be paid for each day of the calendar week, including rest days and holidays, except that it shall not be payable for work days on which the employee is voluntarily absent from service, and it shall not be payable for rest days or holidays if the employee is voluntarily absent from service when work was available to him on the work day preceding or the work day following said rest days or holiday.

NOTE: Employees whose place of residence is less than thirty (30) miles from the work site will not be allowed the lodging allowance for rest days and holidays unless worked on those days. The place of residence is determined by Company records reflecting the W-4 form filed at time of assignment to position."

This is not a new Rule; it has been in effect for many years.

The facts in these claims are that the Claimants' positions were abolished at the end of the tour of duty on Friday. All Claimants were drawing the per diem allowance. On the following Monday the Claimants displaced on other Rule 38 gangs which were entitled to draw the per diem allowance. These claims are for payment of the per diem allowance for Saturday and Sunday under the terms of Rule 38G.

The Organization argues that because the employees moved from one gang to another gang, by paying the per diem the requirements of Rule 38G are met.

The Carrier avers that it has never paid the per diem under the circumstances of these claims. It further argues that when the Claimants' positions were abolished at the close of the tour of duty on Friday, they became free agents with the right to displace wherever seniority permitted. When the job ended on Friday, the assignment no longer existed, along with the rest days.

As was stated earlier, this is not a new agreement and the Organization bears the burden of proving that its interpretation is correct. While the Organization argues the Carrier has paid the per diem in the past, it has not presented one shred of evidence to support its allegation. There are no statements from any employee supporting its position, nor dates of payment to buttress its position.

The record reveals the Organization failed to meet its burden. The Carrier has not violated the Agreement.

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 25th day of 1996.