

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36074
Docket No. MW-35771
02-3-99-3-717**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri-
(Kansas-Texas 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 pay System Gang employee C. L. Brown travel allowance for the round trips made in May, 1997 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (Carrier’s File 1085368 MKT).**
- (2) The Agreement was violated when the Carrier failed and refused to pay System Gang employee C. L. Brown travel allowance for the round trips made in June, 1997 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (Carrier’s File 1085355).**
- (3) The Agreement was violated when the Carrier failed and refused to pay System Gang employee C. L. Brown travel allowance for the round trips made in July, 1997 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (Carrier’s File 1085364).**
- (4) The Agreement was violated when the Carrier failed and refused to pay System Gang employee C. L. Brown travel allowance for the round trips made in August, 1997 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (Carrier’s File 1095933).**

- (5) The Agreement was violated when the Carrier failed and refused to pay System Gang employee C. L. Brown travel allowance for the round trips made in September, 1997 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (Carrier's File 1101143).
- (6) The Agreement was violated when the Carrier failed and refused to pay System Gang employee C. L. Brown travel allowance for the round trips made in October, 1997 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (Carrier's File 1111314).
- (7) The Agreement was violated when the Carrier failed and refused to pay System Gang employee C. L. Brown travel allowance for the round trips made in November, 1997 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (Carrier's File 1116106).
- (8) The Agreement was violated when the Carrier failed and refused to pay System Gang employee C. L. Brown travel allowance for the round trips made in December, 1997 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (Carrier's File 1121787).
- (9) As a consequence of the violation referred to in Part (1) above, Mr. C. L. Brown shall be allowed a travel allowance of eight hundred twenty-five dollars (\$825.00).
- (10) As a consequence of the violation referred to in Part (2) above, Mr. C. L. Brown shall be allowed a travel allowance of six hundred dollars (\$600.00).
- (11) As a consequence of the violation referred to in Part (3) above, Mr. C. L. Brown shall be allowed a travel allowance of six hundred seventy-five dollars (\$675.00).

- (12) As a consequence of the violation referred to in Part (4) above, Mr. C. L. Brown shall be allowed a travel allowance of seven hundred twenty-five dollars (\$725.00).**
- (13) As a consequence of the violation referred to in Part (5) above, Mr. C. L. Brown shall be allowed a travel allowance of eight hundred fifty dollars (\$850.00).**
- (14) As a consequence of the violation referred to in Part (6) above, Mr. C. L. Brown shall be allowed a travel allowance of eight hundred fifty dollars (\$850.00).**
- (15) As a consequence of the violation referred to in Part (7) above, Mr. C. L. Brown shall be allowed a travel allowance of eight hundred fifty dollars (\$850.00).**
- (16) As a consequence of the violation referred to in Part (8) above, Mr. C. L. Brown shall be allowed a travel allowance of eight hundred fifty dollars (\$850.00)."**

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 consolidates eight successive claims filed by the Organization on behalf of the Claimant for unpaid travel allowances in connection with expenses incurred by the Claimant when he made weekend trips home during the months of May through December 1997. In support of its claims, the Organization relies upon Article XIV

Travel Allowance, newly adopted in the 1996 National Mediation Agreement. That provision states in pertinent part:

"Section 1

- (a) At the beginning of the work season employees are required to travel from their homes to the initial reporting location, and at the end of the season they will return home. This location could be hundreds of miles from their residences. During the work season the carriers' service may place them hundreds of miles away from home at the end of each work week. Accordingly, the Carriers will pay each employee a minimum travel allowance as follows for all miles actually traveled by the most direct highway route for each round trip. . . ."

The Carrier initially denied the claims on the merits for two reasons. First, the Carrier contended that the Claimant was not eligible for travel allowance because Article XIV applied only to employees on regional or system production gangs and the Claimant was not assigned to either one of those kinds of gangs. Second, the Carrier alleged that the Claimant was not eligible for travel allowance because he had moved his residence off his home territory. According to correspondence exchanged on the property, the Claimant moved his residence from Greenville, Texas, to Jeffersonville, Indiana, in April 1997. The Carrier maintained that it had no rail operations within the vicinity of the Claimant's new residence and that the closest rail point within the Claimant's seniority territory was hundreds of miles away in Kansas. The Carrier argued that it was not contractually obligated to allow travel allowances for employees who move so far away from their seniority territory. A procedural objection based on untimeliness was also raised by the Carrier for the claim submitted by the Organization for travel expenses incurred in May 1997.

The first reason for declining the claims was resolved by NMB Arbitration Board No. 1114, National Carriers' Conference Committee and The Brotherhood of Maintenance of Way Employees (Kasher, 1999), and the second reason for declining the claims was resolved by Public Law Board No. 6302, Award 20 (Malin, 2000). In the latter case, as here, the claimant moved his residence outside his seniority territory. Concluding that Article XIV contained no express limitations requiring an employee to live within or near his seniority territory to qualify for the travel allowance, the Board stated:

“Nevertheless, Carrier presents a parade of horrors it maintains will result from failing to restrict travel allowances to employees who do not move off their seniority territories. Carrier expresses concern that employees will claim to have moved to Alaska or Hawaii and then, under Article XIV, Section 2, be entitled to airfare ‘home’ every third week.

Carrier’s concerns are already met in the Agreement. The Agreement provides for travel allowance for employees who travel home for their rest days. To be entitled to a travel allowance the employee must actually travel to his home, i.e. his bona fide place of residence. Where an employee claims to have moved to Alaska or Hawaii or some other exotic location, or where Carrier has other reasons to suspect the bona fides of a purported move, Carrier will be within its rights to require the employee to document the bona fides of his claimed residence. It should not be burdensome for the employee to produce a lease or other rental agreement or documentation of home ownership. An employee who fails to do so would be acting at his peril.” (Emphasis added)

Against that backdrop, we come to the dispute in the instant case. The Carrier argues that, consistent with Public Law Board No. 6302, Award 20, the Claimant should have submitted documentation during the on-property handling of the case that would have verified his residence in Jeffersonville, Indiana. The Carrier asserts that the Organization has the burden of proving not only that the Agreement was violated, but that the requested remedy is both proper and reasonable. In the absence of any evidence that the Claimant actually lived in Jeffersonville, Indiana, the Carrier submits that the Organization failed to meet its evidentiary burden with respect to a monetary remedy.

Careful examination of Public Law Board No. 6302, Award 20 does not support the Carrier’s argument. As the Board in that case made clear, the Carrier may require documentation regarding residence in two circumstances: where an employee claims to live in an exotic location, or where the Carrier has reason to suspect the bona fides of a move to a different residence. Based on our examination of the instant case as it was developed on the property, neither circumstance is present here. Put another way, proof of residence may be required from the Claimant, but only if it is first put in issue by the Carrier. A fair reading of the record in this matter indicates that the bona fides of the Claimant’s residence were never in dispute, and therefore we conclude that, with

one exception, the claims have merit and the requested remedy for reimbursement must be granted.

The one exception refers to the claim submitted for travel allowance in May 1997. For the first time in its Submission before the Board, the Organization offered various arguments disputing the Carrier's untimeliness defense. We require no citation for the well-established principle that the Board is permitted to consider only those arguments the parties themselves considered on the property. Because the Organization during the handling of the claim did not refute the Carrier's contention that the May 1997 claim was untimely filed, we are compelled to deny that claim. Accordingly, paragraphs one and nine are denied; the remaining paragraphs comprising the Organization's statement of claim are sustained.

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 18th day of June, 2002.