

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36617
Docket No. MW-35059
03-3-98-3-808**

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to properly reimburse Tamper Operator R. J. Keto for lodging expenses incurred during the months of September and October 1997 while away from Tripoli, Wisconsin (System File R1.205/8-00334).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. R. J. Keto shall be allowed four hundred eighty-six dollars and forty cents (\$486.40) as reimbursement for the lodging expenses incurred during the months stated in Part (1) hereof.”

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.

In the months leading up to the time that this dispute arose, the Claimant was primarily assigned to work in various locations in North Dakota, while residing in Tripoli, Wisconsin. Because of the great distances involved, he did not ordinarily make weekend trips home for the entire months of September and October 1997. The Claimant submitted lodging expense reimbursement requests totaling \$1352.60 for September 1997 and \$1594.80 for October 1997, inclusive of weekends when he was not working.

When the Carrier remitted the Claimant's expense check for September 1997, it withheld reimbursement for lodging expenses totaling \$220.00 and from the check for October 1997 the Carrier withheld reimbursement for lodging expense totaling \$266.40. When the Claimant received his Employee Expense Account forms back from his Roadmaster, he was informed that the lodging expenses he had incurred for all weekend dates had been disallowed. Inasmuch as it was not practical for the Claimant to travel 500 or more miles to his home in Tripoli, Wisconsin, on Friday and return to North Dakota on Sunday of each weekend and because he did thereby incur the claimed lodging expense on said dates, he sought the assistance of his General Chairman who timely presented a claim to the Carrier.

We are not insensitive to the "Catch-22" situation in which the Claimant found himself barred by geography from reasonably returning home on weekends and it is not disputed that he actually incurred the remote lodging expenses on the weekend dates. Nor do we find the innovative arguments raised by the Organization in this record short of colorable support in reason or contract language. However, this claim is not a matter of first impression and the Board has rendered a prior decision rejecting those same arguments. Except for the dates involved and more artful advocacy, this claim is indistinguishable from that filed six years earlier against the Carrier by the Claimant, citing the same facts and Agreement provisions.

In rejecting that prior virtually identical claim, the Board held in denial Third Division Award 31359, as follows:

"Because this is a contract dispute, the organization must carry the burden to demonstrate a violation of the relevant language. It has not done so. As far as lodging reimbursement is concerned, Rule 35 clearly only focuses upon the "work week". In this claim, Claimant seeks reimbursement for his rest days when those expenses were voluntarily incurred by Claimant. Notwithstanding the equities of the situation which could require Claimant

to travel great distances on his rest days to return home to avoid having to pay for rest day lodging, this Board does not have the authority to change the clear language of the rule.

Our conclusion is underscored when other provisions of the rule are considered. When the parties intended payment for a rest day (as opposed to a day during the work week), they plainly said so. . . . From a contract interpretation standpoint, the failure to make similar provisions for lodging on rest days is eloquent silence to establish that such payment was not intended.

The claim must be denied.”

Because the record evidence presents no basis for finding that the above-quoted decision must be reversed for palpable error and given the identity of the Parties, issue and Agreement language, we must consider Third Division Award 31359 res judicata of the instant claim.

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 29th day of July 2003.