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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37477
Docket No. MW-36137
05-3-00-3-314**

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 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 failed and refused to pay System Gang employe N. Morgan travel allowance for the trips made on March 4 and 8, 1999 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (System File D-9936-10/1185654).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. N. Morgan shall be allowed a travel allowance of four hundred fifty dollars (\$450.00).”**

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.

The Claimant in this case seeks reimbursement under Article XIV for travel on March 4, 1999 to his home and back to the System Track Gang headquartered at Fresno, California, on March 8, 1999. The 1996 National Mediation Agreement states in relevant part at Article XIV:

"ARTICLE XIV - TRAVEL ALLOWANCE

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 carrier's 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. . . ."

Also pertinent to this dispute is the September 8, 1998 Letter of Agreement which further clarifies who is entitled to the travel allowance. The applicable provisions state as follows:

"It is agreed that an employee filling a Group 20, 26 or 27 assignment who completes a round trip from work to home to work will not be granted an Article XIV Section 1(a) TRAVEL ALLOWANCE when any of the following conditions exist:

* * *

- (2) The employee applies for, receives and reports for a bulletined position on another gang, not involving the project encompassing the employee's previous assignment, on the work day immediately following the rest day round trip."

The record establishes that the Claimant worked on System Track Gang 9001. His workweek consisted of four, ten hour days, Monday through Thursday, with Friday, Saturday and Sunday designated as rest days. On Thursday, March 4, 1999, the Claimant reported for duty and learned that he was the successful bidder for a job on System Track Gang 9002.

After work that day, the Claimant made the trip to his home in Gallup, New Mexico. He reported back to work on System Track Gang 9001 on Monday, March 8, 1999, a day that his supervisor had approved as a "safety day." The claim seeking the applicable travel allowance for the 1,896 miles traveled during the Claimant's round trip was denied by the Carrier.

The Carrier contends that the weekend travel allowance provided in Article IV, Section 1(a) is inapplicable in this instance. Here, the Claimant bid off System Track Gang 9001 to System Track Gang 9002 and was notified of his assignment on March 4, 1999. The two gangs were working on different projects and at different locations, the Carrier states, and therefore this was an exercise of seniority which falls within Section 2 of the September 8, 1998 Letter of Agreement. The Claimant should have reported to his new assignment, not the old one. Because he voluntarily bid and was assigned from one gang to another, he was ineligible for a reimbursable round trip home.

The Carrier further argues that the Claimant should have checked the bid line to see if he was assigned and then contacted his supervisor to determine when he would be released. By failing to check the bid line, the Claimant acted at his own peril when he showed up at his old gang following his assigned rest days. According to the Carrier, Rule 20 places the responsibility on the employee, not the Carrier, to determine where and when he should report for work. Rule 20 states in pertinent part:

"(f) Successful applicant will be released and permitted to move to the new assignment on the following Monday or as soon as provisions can be made for the employee's release. . . ."

Thus, the Carrier asserts that the claim must be denied because no travel compensation is owed for mileage incurred in the exercise of seniority. The

Claimant should have reported to System Track Gang 9002. His failure to do so does not create an entitlement to a weekend travel allowance pursuant to Article IV, Section 1(a).

The Organization contends that the Carrier's position should be rejected by the Board. True, the Claimant had been awarded a bid for a job on System Track Gang 9002. Had the Carrier notified the Claimant on March 4, 1999 that he was released from the gang, then the Organization acknowledges that the Claimant should not be paid for voluntary travel home prior to the exercise of seniority to another gang. In this case, however, the Claimant was not released from his former position until Monday, March 8, 1999 when he reported back to System Track Gang 2001. Because the Claimant was at work on the workdays immediately preceding and following his rest days, he met the requirements for, and is contractually entitled to, the travel allowance provided in Article IV, Section 1(a).

The Board reviewed the record as it was developed on the property. We note at the outset that the parties continued to exchange correspondence after conference was held in connection with the claim. While we do not wish to encourage such a practice, the Board nevertheless has considered in full the evidence and arguments presented after conference but prior to the Organization's filing of its notice of intent with the Board.

Based on our examination, the Board finds that the Organization's claim must be denied.

The record establishes that the Claimant bid for a position on another gang that did not involve the project encompassing his previous assignment. The record further shows that the Claimant was awarded the position on the other gang on March 4, 1999. There is a dispute as to whether he was released at that time. As the moving party in this case, the burden was on the Organization to prove that the Claimant was required to report back to System Track Gang 9001 after the safety day in order to be released by his supervisor. Based on the evidence presented, that evidentiary burden was not met. The Organization cited no Agreement provision or Rule support that would require Carrier supervision to initiate such action. Moreover, its position was directly refuted by the Carrier's contention that the onus

is on the employee to check to see if he has been awarded a new position in accordance with Rule 20.

We must conclude that the Claimant was not authorized to withhold the exercise of his seniority. Once that finding is made, it follows that no compensation is owed for a weekend travel allowance. Voluntary travel home prior to the exercise of seniority to another gang is specifically covered by the September 8, 1998 Letter of Agreement. The Claimant was not entitled to a travel allowance under this stated exception to Article IV, Section 1(a).

Our conclusion in this case is consistent with a prior Award involving these same parties. In Public Law Board No. 6638, Award 12, the employee was informed that he had been displaced and needed to exercise his seniority to displace onto another gang. Instead of displacing onto another gang located nearby the next day, the employee went home and initiated contact with the Carrier during his rest days. He subsequently sought a weekend travel allowance, contending that the delay was caused by the Carrier's lack of complete information concerning his displacement rights and the location of the gang. Rejecting that argument, the Board stated:

“ . . . There is no explanation as to why Claimant could not have gathered the necessary information from his supervisor or Carrier's office on January 3 after he learned he had been displaced. This Board has found that once a displacement occurs, the rights attendant to the position previously held are terminated, and it is the timely exercise of seniority that determines whether certain contractual benefits are payable.”

As in that case, we find that the Organization failed to prove that the Claimant met the conditions for travel allowance or that he did not fall within one of the stated exceptions to its entitlement contained in the September 8, 1998 Letter of Agreement. His decision to travel home after being awarded a new position did not meet the requirements of Article IV. Therefore, the claim must be denied.

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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 19th day of April 2005.