Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37849
Docket No. MW-36811
06-3-01-3-350

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company [former Southern
(Pacific Transportation Company (Western Lines)]

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier refused to allow Mr. R. Mojarro payment of the per diem allowance for the dates of April 14, 15 and 16, 2000 (System File J-0039-58/1234612 SPW).

(2) As a consequence of the violation referred to in Part (1) above, Claimant R. Mojarro shall now receive the per diem allowance payment of one hundred forty-four dollars ($144.00) for the dates of April 14, 15 and 16, 2000."

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, California Division employee Mojarro, was assigned to Gang 7919 and Gang 8162 in April 2000. He was working under the Western Lines Collective Bargaining Agreement of the Southern Pacific Transportation Company (Southern Pacific). In 1996, the Union Pacific Railroad Company (Union Pacific or the Carrier) and the Southern Pacific merged. Pursuant to the September 30, 1997 Implementing Agreement, employees working in the Los Angeles Basin were brought under the Southern Pacific Agreement with the Brotherhood of Maintenance of Way Employes (BMWE or the Organization).

Monday through Thursday were the Claimant's regular work days. Friday, Saturday and Sunday were his rest days. On Thursday, April 13, 2000, the Claimant worked as the Assistant Foreman on Gang 7919. He was off on his rest days April 14, 15 and 16. He took three days of vacation on April 17, 18 and 19 and resumed work on April 20, 2000.

The Claimant worked on the work day before his rest days but did not work on the work day following his rest days because he was on vacation that day and the following two days. Because the Claimant did not work on the workday immediately following his rest days, the Carrier denied him a per diem ($48.00) for his three rest days. On May 8, 2000, the Union Pacific Federation of the BMWE filed a claim on behalf of Mojarro contending that he was improperly denied a per diem for his regular rest days, April 14, 15 and 16, 2000.

Rule 39(e) of the Southern Pacific Agreement, the contract governing maintenance of way employees in the Los Angeles Basin, provides employees assigned with headquarters on-line, a daily per diem allowance of $48.00 to help defray expenses for lodging, meals, and travel. In April 2000, the Claimant was headquartered on-line on the Los Angeles Division.

The per diem allowance is paid for each day of the calendar week, including rest days. However, it is not paid for workdays on which the employee is voluntarily absent from service "... or for rest 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...."

Under Rule 39(e) employees headquartered on-line must work both the workday immediately preceding their rest period and the workday immediately following their rest period if work is available to them on these days in order to be eligible for the per diem allowance on their rest days.

The Claimant worked on Thursday, April 13, 2000, the workday immediately preceding his rest days. However, he did not work on Monday, April 17, 2000, the workday immediately following his rest period because he was on vacation that day. Therefore, he was not entitled to a per diem allowance for his rest days in accordance with one of the express exceptions set forth in Article 39(e). The claim is denied as a result.

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 1st day of August 2006.