

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38009
Docket No. MW-37104
05-3-01-3-682

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to pay Mr. M. J. Rath the travel allowance for weekend travel made on May 18 and 22, 2000 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (System File T-D-2074-W/11-00-0416 BNR).
- (2) The Carrier violated the Agreement when it failed and refused to pay Mr. S. D. Dumond the travel allowance for weekend travel made on March 31 and April 3, 2000 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (System File T-D-2088-B/11-00-0423).
- (3) The Carrier violated the Agreement when it failed and refused to pay Mr. J. D. Schrader the travel allowance for weekend travel made on April 7 and 10, 2000 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (System File T-D-2089-B/11-00-0424).
- (4) The Carrier violated the Agreement when it failed and refused to pay Mr. J. D. Schrader the travel allowance for weekend travel made on May 18 and 21, 2000 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (System File T-D-2090-B/11-00-0425).

- (5) The Carrier violated the Agreement when it failed and refused to pay Mr. B. L. Swang the travel allowance for weekend travel made on May 5 and 7, 2000 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (System File T-D-2091-B/11-00-0426).
- (6) As a consequence of the violation referred to in Part (1) above, Mr. M. J. Rath shall be paid the weekend travel allowance of one hundred dollars (\$100.00) as well as interest on the amount of money claimed, at eight percent (8%) per annum, compounded monthly from the date of the initial claim.
- (7) As a consequence of the violation referred to in Part (2) above, Mr. S. D. Dumond shall be paid the weekend travel allowance of one hundred dollars (\$100.00) as well as interest on the amount of money claimed, at eight percent (8%) per annum, compounded monthly from the date of the initial claim.
- (8) As a consequence of the violation referred to in Part (3) above, Mr. J. D. Schrader shall be paid the weekend travel allowance of twenty-five dollars (\$25.00) as well as interest on the amount of money claimed, at eight percent (8%) per annum, compounded monthly from the date of the initial claim.
- (9) As a consequence of the violation referred to in Part (4) above, Mr. J. D. Schrader shall be paid the weekend travel allowance of seventy-five dollars (\$75.00) as well as interest on the amount of money claimed, at eight percent (8%) per annum, compounded monthly from the date of the initial claim.
- (10) As a consequence of the violation referred to in Part (5) above, Mr. B. L. Swang, shall be paid the weekend travel allowance of seventy-five dollars (\$75.00) as well as interest on the amount of money claimed, at eight percent (8%) per annum, compounded monthly from the date of the initial claim."

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.

Each of the above five claims is the same. In each, the Claimants were not paid a weekend travel allowance. The Claimants left work, went home and then returned to work and payment was refused. The Organization alleges a violation of Article XIV, Section 1 of the 1996 National Agreement when the Carrier, in violation of past practice and Agreement language, failed to pay the Claimants their travel allowance.

As specific example, there is no dispute that Claimant Rath ended his workweek at Willmar, Minnesota, and then drove 355 miles to his home residence in Tuttle, North Dakota. To begin his next workweek, he left his residence and traveled 116 miles to Valley City, North Dakota, to work a new mobile gang assignment. His submitted payment of 471 miles to be paid under the Article XIV table of payments as a travel allowance was denied by the Carrier.

The Carrier states that the compensation under Article XIV is stated as a "round trip" under clearly enunciated conditions of the season start-up and end. The Carrier denied payment based on the fact that in the exercise of seniority the Claimant made two one-way trips and that is not compensated under Article XIV. According to the Carrier put it:

"... the Claimant went from point A to point B for a stay, and later from point B to point C. By any definition, that is not a round trip -- and a 'round trip' is all that is compensated under the Weekend Travel Allowance, during the work season."

The Carrier held throughout the claim handling procedure that there was no practice of payment for these circumstances and no Agreement language violated.

Article XIV of the September 26, 1996 National Agreement, Section 1, Paragraph A states:

“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 Organization argues that the Agreement language mandates payment to the Claimants for travel allowance for the weekend travel incurred.

The language of the Article, *supra*, is clear on its face as to a travel allowance. It refers to employees “at the beginning of the work season” who are “required to travel from their homes to the initial reporting location and at the end of the season . . . return home.” The language that follows acknowledges that the work may place them far from home and sets a table of payments, “[d]uring the work season” for employees “by the most direct highway route for each round trip” home.

There is no dispute between the parties on the core meaning of the language. Travel is paid if an employee is making one way trips at the beginning and end of the work season to a system regional gang and also if they are making round trip travel home to and from their assigned gang. What is in dispute at bar is that the employee was assigned to a System Regional Gang and traveled home. After being home, the employee returned to a different System Regional Gang. Had they not changed gangs through the exercise of seniority, there would be no dispute. The Carrier argues that the employee went to a new assignment on a one way trip not covered by Article XIV. The Organization states that this was a round trip back to a System Regional Gang, having nothing to do with the exercise of seniority.

The Board thoroughly analyzed all on-property materials, arguments and Awards. In line with the meaning of Article XIV, what is persuasive to the Board is that the intent of this Article is clear. After a complete evaluation, Arbitration Board No. 1114 concluded, "... that the travel allowance benefits of Article XIV of the September 26, 1996 National Agreement apply to all traveling employees. . . ." It was the intent of the parties to provide a travel allowance benefit to employees who through their work with System Regional Gangs found themselves during the work season far away from home. The travel allowance was intended for all employees who travel between their homes and various changing work locations at the start and end of workweeks. Those changed locations could develop for reasons of Carrier changes or seniority as negotiated language does not specify.

Accordingly, although there is support in prior payments, the language itself has no limiting condition as to seniority or other condition. Those who negotiated this language could easily have utilized such terminology on seniority changes, giving benefits only under express limited conditions. They did not do so. These are traveling employees and continue to be traveling employees after the exercise of their seniority to another System Regional Gang.

The Board carefully studied numerous Awards finding them not on point (Third Division Award 36718); involved with other pertinent issues; a lack of facts; other Rules; another Carrier (Third Division Award 36810 with Organization Dissent and Carrier Response); and with additional Letters of Agreement (Third Division Award 37477). In this dispute the Organization fully presented the factual base to support its position, including prior settlement claims on point with the instant case. The Board is persuaded that the language of Article XIV and the facts at bar support a sustaining Award to Parts (1) through (5). For Parts (6) through (10), the Board sustains the requested allowance, but denies payment of any interest.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 6

Award No. 38009
Docket No. MW-37104
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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 25th day of October 2006.

CARRIER MEMBERS' DISSENT
TO
THIRD DIVISION AWARD 38009, DOCKET MW-37104
(Referee Zusman)

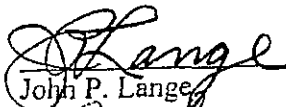
The Board relies on Arbitration Board No. 1114's award. That case had nothing to do with the dispute before this Board. The issue before Arbitration Board No. 1114 was, according to the Organization, whether "...the travel allowance benefits of Article XIV... apply to all traveling employees...." The arbitrator called the dispute to be decided, "...the narrow question of whether Article XIV Travel Allowances are only payable to regional and system-wide production gangs...or whether such allowances are payable to all 'traveling employees'...." There was no dispute before the arbitrator in Arbitration Board No. 1114 dealing with what are the benefits of Article XIV. The case before this Board is not about whether the Claimant is covered by Article XIV. The issue is whether the Claimant is entitled to a **round trip** allowance under Section 1(a). The dispute concerns the meaning of the language "round trip". There is nothing in Arbitration Board No. 1114's award about the meaning of the phrase "round trip."

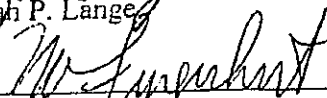
As the record shows, the Board also erroneously places significance on prior payments, which were random, one time local level payments to settle claims without regard to their actual merit. The Board ascribes precedential intent which is contrary to facts in the record.

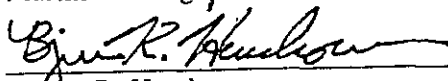
Third Division Award 37994, adopted the same day, is very much on target. The Board said:

"The Board finds the language of Article XIV, Section 1 to be clear and unambiguous. ... The common meaning of "round trip" is travel from and back to the same point (A to B and back to A)... It is clear from Section 1's language that "round trip" is defined in the context of the mobile gangs to which the provision applies as travel from and to the gang...."

We dissent.


John P. Lange


Martin W. Fingerhut


Bjorn R. Henderson


Michael C. Lesnik