

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39296
Docket No. MW-38205
08-3-NRAB-00003-040079
(04-3-79)

The Third Division consisted of the regular members and in addition Referee Susan R. Brown 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 allow Gang 9004 employe D. L. Robak the per diem allowance for the dates of November 28, 29, 30 and December 1 and 2, 2002 (System File WJ-0339-151/1353245).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. L. Robak shall now receive the per diem allowance for the aforesaid dates for a total per diem allowance of two hundred sixty dollars (\$260.00).”**

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 worked on Gang 9004 in Valparaiso, Nebraska. He worked all assigned hours on November 26 and took a personal day on November 27, 2002. November 28 and 29 were holidays and November 30 and December 1 were his rest days. The Claimant took a personal leave day on December 2 and started his vacation on December 3, which continued through year's end. His claim for a daily per diem allowance for November 27 through December 2 was denied by the Carrier.

Rule 39 (e) reads, in pertinent part, as follows:

"On-line Service* - Employees assigned with headquarters on-line . . . will be allowed a daily per diem allowance of . . . \$52.00 effective July 1, 2002 . . . to help defray expenses for lodging, meals and travel.

The foregoing per diem allowance will be paid for each day of the calendar week, including rest days, holidays and personal leave days, except it will not be payable for workdays on which the employee is voluntarily absent from service, or for rest days, holidays or personal leave 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, holidays or personal leave days."

Appendix X-1 (2) states:

"For Monday through Friday vacations, employees will be granted per diem allowances for the weekend immediately preceding the start of the vacation period and no other per diem allowance will apply or commence until the employee returns to work."

It is undisputed that a per diem allowance is paid to employees for days preceding a five-day vacation. In his statement on the property, the Claimant asserted:

". . . I took 30 hrs vacation and a personal day during the following week [after his last day of work]. The facts of the matter are that I

took vacation for the remainder of the year. That personal day could have been put in during one of these later weeks. The reason it was put in for the first day of my first week off was because the Foreman said that entering it that way would ensure payment of the Per Diem in question.”

The Carrier never refuted the Claimant’s assertion that he was on vacation for several weeks contiguous to his holidays, rest days, and personal day. The payroll records it submitted covered only the first week, which contained the personal day, and did not show his status in subsequent weeks, leaving the Claimant’s statement unchallenged. In that light, the Claimant’s particular situation reflects that intended by the exception to the voluntary absence rule set forth in Rule 39 (e): employees who take full week vacations (or more) shall be entitled to a per diem allowance for eligible days, including rest days, personal days and holidays, that precede such a vacation. The Claimant’s odd deployment of a personal day at the start of a lengthy vacation absence, given the particular unrefuted facts and circumstances of this case, is insufficient to require him to forfeit his clearly articulated rights to per diem payments.

AWARD

Claim sustained.

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 29th day of September 2008.