

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39324
Docket No. MW-37951
08-3-NRAB-00003-030356
(03-3-356)

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(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 J. R. Yokoyama, Jr., the per diem allowance for the dates of June 8, 9, 15 and 16, 2002. (System File: J-0239-65/1329422)
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. R. Yokoyama, Jr., shall now “. . . be allowed a total per diem allowance of one hundred ninety two dollars (\$192.00) for June 8, 9, 15 and 16, 2002.”

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 dispute at issue involves appeal of a Carrier denial of per diem allowances for two sets of rest days that immediately preceded the workday on which the Claimant elected to take a single-day vacation.

As concerns one of the dates at issue, the Claimant, a member of a compressed workweek gang, performed work during the period June 3 to 7 and took rest days of June 8 and 9, 2002. On June 10, a Monday workday, the Claimant elected to take a single-day vacation. In regard to the second set of dates at issue, the Claimant performed service during the period of June 11 to 14; took rest days of June 15 and 16; and elected to take a single-day vacation on June 17, 2002.

The Carrier denied the claim for payment of a per diem allowance for the four rest days in application of Rule 39(e) of the Agreement.

While Rule 39(e) explicitly provides payment of a per diem allowance for rest days, it also clearly proscribes that a per diem allowance 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.”

In electing to voluntarily absent himself from service for the two single-day vacation days immediately following his rest days, the Claimant triggered application of the aforementioned exceptions of Rule 39(e) for which a per diem allowance will not be paid.

Because Rule 39(e) is controlling, we have no alternative but to conclude, as did many prior Awards of the Board, that the claim lacks Agreement support. See Third Division Awards 37105, 37163, 37571, 37716, 37849, 39133, 39134, 39135, 39136, 39137, 39277, as well as Public Law Board No. 6302, Award 14 and Public Law Board No. 6638, Awards 2, 4, 6, 8, 10, and 12.

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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 29th day of September 2008.