

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40100
Docket No. MW-40408
09-3-NRAB-00003-080121

The Third Division consisted of the regular members and in addition Referee Sherwood Malamud when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(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 compensate Mr. D. Brumley the mileage allowance, or for his time, in traveling by personal vehicle as directed by the Carrier from his work point at Abbott, Texas to Bay City, Texas on August 1, 2006; from his work point at Laward, Texas to the work point at West, Texas on August 8, 2006; from his work point at West, Texas to the work point at Laward, Texas on August 16, 2006; and from his work point at Luling, Texas to the work point at Waco, Texas on September 2, 2006 (Carrier’s File 1462737 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Brumley shall now receive the mileage allowance for the aforesaid dates for a total of three hundred eighty-two dollars and twenty cents (\$382.20) and he shall be compensated for a total of sixteen and one-half (16.5) hours for the aforesaid dates at his respective time and one-half rate of pay for a total of four hundred seventy-nine dollars and eight cents (\$479.08).”**

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.

At the time this dispute arose, Claimant D. Brumley was assigned to operate Cat Tamper 9901 on System Rail Gang 9153. He filed this claim for mileage and time for travel on four occasions: August 1, August 8, August 16 and September 2, 2006.

His claim encompasses mileage and the time to drive that distance on the above dates in sequence, as follows: 244 miles, 237 miles, 237 miles and 142 miles. On each occasion, his Supervisor assigned him to operate a Mark IV Tamper at the location. During progression of the claim on the property, the Organization asserted that the Carrier violated Rules 29 and 40.

Before the Board, the Organization raised Rule 32 and Rule 33. Inasmuch as these Rules were not raised on the property, the Board did not consider or apply them here. Based on the record evidence, the Board concludes that the Carrier paid the Claimant the appropriate travel allowance and mileage for his travel on the four dates. The Organization failed to submit evidence that travel occurred that obligated payment under Rule 29. Furthermore, by its own terms, Rule 40 is inapplicable to an on-line gang, such as, Gang 9153. Because the Organization failed to prove that the Carrier violated Rule 29 or Rule 40, 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 November 2009.