

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40414
Docket No. MW-39854
10-3-NRAB-00003-070010
(07-3-10)**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(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 allow ‘on-line’ employee D. Harper the travel allowance for the round trip he made from his ‘on-line’ work location at Hillsboro, Illinois to his residence at Ironton, Missouri and returning to his ‘on-line’ work location at Conway, Arkansas and the per diem allowance for the dates of November 12, 13 and 14, 2005 (System File T05-31/1439195 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Harper shall now receive payment of the travel allowance in the amount of one hundred dollars (\$100.00) for the aforesaid trip and receive payment of the per diem allowance for each of the aforesaid dates.”

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 was assigned and working as a Trackman on on-line Gang 9173, which was working a compressed half work schedule in conjunction with Gang 9174. The gang's reporting site was Hillsboro, Illinois. The Claimant worked a compressed half from November 1 through November 8, 2005. He was displaced on November 8. The Claimant worked three more days on Gang 9174 which was transitioning compressed schedules. The Claimant's work ceased on November 11. The Claimant's rest days were November 12, 13 and 14, 2005. The Claimant resides in Ironton, Missouri. The Claimant reported to on-line Gang 9115 on November 15 for the first day of the compressed half schedule for that gang. The reporting site was Conway, Arkansas.

The Claimant was not paid the per diem allowance for November 12, 13 and 14. The Organization maintains that the Claimant is entitled to be paid per diem for those rest days pursuant to Rule 36. The Claimant was not paid the travel allowance for the trip from Hillsboro, Illinois, to his home in Ironton, Missouri, and to the location of Gang 9115 in Conway, Missouri. The Organization maintains that the Claimant is entitled to be paid the travel allowance pursuant to Rule 37(a)(1).

The Carrier counters that the Claimant is not entitled to the per diem payment because he was not assigned to an on-line gang on November 12, 13 and 14, 2005. The Claimant was displaced and not assigned to an on-line gang prior to beginning his assignment to Gang 9115 on November 15. The Carrier asserts that the Claimant was not entitled to the travel allowance because he did not complete a round trip as required by the Rule.

The Carrier cites to Referee Edwin H. Benn's decision regarding the per diem allowance in Public Law Board No. 7156, Award 6 as controlling in the instant matter. Referee Benn's decision provides, in pertinent part:

"Claimant was assigned to Gang 9178 working an alternative work period. Claimant's position on Gang 9178 was abolished at the end of his tour on September 23, 2002, which was the last working day of that gang's compressed half work schedule. Claimant then exercised his seniority and displaced to a position on Gang 9179. The two on-line gangs worked the same alternative work period schedules. Claimant began working on Gang 9179 on October 1, 2002 - the first workday available to him on that gang.

'Rule 36 (b)(1) provides:

Employees who are assigned headquarters of "on-line" (without outfit cars) will be allowed a daily per diem allowance equal to that paid under Award of Arbitration Board No. 298 to help defray expenses for lodging and meals subject to the qualifying provisions of section (b)(2) of this Rule.'

The clear language of Rule 36(b)(1) requires that this claim be denied. Rule 36(b)(1) states that '[e]mployees who are *assigned* headquarters of 'on-line' (without outfit cars) will be allowed a daily per diem allowance. . . .' [emphasis added]. When Claimant's position on Gang 9178 was abolished on September 23, 2002, he was no longer 'assigned' to that gang. Similarly, Claimant was not 'assigned' to Gang 9179 until October 1, 2002.

By clear language of Rule 36(b)(1) employees must be 'assigned' to an on-line gang to receive the per diem benefit. Because Claimant was not assigned to any gang during the period from the time of the abolishment of his position on Gang 9178 on September 23, 2002 until he began his assignment on Gang 9179 on October 1, 2002,

Claimant has no contract right to the per diem sought by the Organization for the period September 24 through 30, 2002.”

In the instant matter, Claimant’s position on the on-line gang ended when he completed working three days on Gang 9174 following his displacement from Gang 9173. He was entitled to the per diem for that three day period and the record indicates that he was paid the per diem for these three days on Gang 9174. The Claimant was not assigned to Gang 9173 following his displacement and the Organization does not, and cannot, argue that the Claimant was assigned to Gang 9174 following his three days of work on that gang. Following completion of work on November 11, 2005, the Claimant was not assigned to an on-line gang. He became assigned when he reported to Gang 9115 on November 15, 2005. Accordingly, he is not entitled to the per diem payment for rest days because he was not assigned during that period.

The Carrier also cites to Referee Benn’s decision regarding the per diem allowance in Public Law Board No. 7156, Award 7. Referee Benn compared the decision of Award 6. In Award 6, the Claimant’s gang was abolished and he displaced an employee on another gang. In Award 7, the Claimant exercised his seniority from one gang to another. Under the analysis of those Awards, neither distinction suggests a different result. Whether the position was abolished or whether the Claimant exercised seniority to move, the employees were not “assigned” within the meaning of Rule 36. They were not entitled to the per diem for the period between assignments.

The Carrier also cites to Referee Benn’s decision regarding the travel allowance in Public Law Board No. 7156, Award 7 as controlling in the instant matter. In that Award the Claimant was working an on-line gang assignment in Oklahoma. He exercised seniority and bid to a gang working an alternative work schedule in Missouri. The Claimant ceased working the on-line gang on September 13, 2002 and returned to his home in Kansas and remained there on September 14 and 15. He reported to the Missouri gang on September 16 – the beginning of that gang’s work cycle.

Referee Benn's decision in Award 7 provides, in pertinent part:

“With respect to the travel allowance portion of the claim, we find the Organization cannot carry its burden. Rule 37(a)(1) provides for travel expense ‘. . . for each round trip.’ Claimant did not make a ‘round trip’ on the dates for which travel allowance is claimed. Instead of going from Gore to his home in Moline, Kansas and return (as he would have for Gang 8896), Claimant drove from Gore, Oklahoma to Moline, Kansas and then to Chamois, Missouri. That was not a ‘round trip’ as required by the rule. Moreover, according to the record, Claimant seeks 726 miles in travel allowance as his mileage. A round trip from Gore to Moline is approximately 350 miles.”

The Board notes too the distinction raised in footnote 2 of Award 7, specifically, that the instant matter does not involve “twin” assignments. Footnote 2 discusses the situation of Public Law Board No. 7156, Award 3, wherein the Claimant exercised his seniority to move from one gang to another. Both gangs worked the same compressed schedule; both gangs observed the same rest schedule; both gangs worked at the same location and both gangs worked for the same individual. In effect, the gangs were alter egos.

The situation of footnote 2 is not the situation in the instant matter. Here, the Claimant went from the gang in Illinois to his home in Missouri to his new assignment in Arkansas. That trip is not a “round trip” pursuant to the Rule. The Claimant is not entitled to the travel allowance or the per diem claimed. Based upon all of the foregoing, the claim must be denied.

AWARD

Claim denied.

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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 14th day of May 2010.