

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41031  
Docket No. MW-41344  
11-3-NRAB-00003-100122**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employees Division –  
( IBT Rail Conference

**PARTIES TO DISPUTE: (**

(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 pay System Gang employe I. Yazzie the travel allowance for his weekend round trip made from his work location to his residence on October 15, 2008 and returning from his residence to his work location on October 23, 2008 (System File C-0836U-153/1513166).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant I. Yazzie shall now be paid the travel allowance in the amount of two hundred twenty-five dollars (\$225.00).”

**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.

In October 2008, System Gangs 8532 and 8527 were working compressed halves with identical schedules (work and rest days). In October 2008, the Claimant was assigned to Gang 8532 as a Speed Swing Operator and was recalled to Gang 8527 on a higher-rated position as a Thermite Welder. The Claimant's last scheduled work day on Gang 8532 was October 15, 2008, when Gang 8532 was located at Maricopa, Arizona. The Claimant then drove to his home in Saint Michaels, Arizona, and observed his rest days. Commencing October 23, 2008, the Claimant began his assignment on Gang 8527 (the one to which he was recalled) and drove to Gang 8527's assembly point at Indio, California. The distance from Maricopa (Gang 8532's assembly point) to the Claimant's residence in Saint Michaels is more than 300 miles. The distance from the Claimant's residence to Indio (the assembly point of Gang 8527) is more than 500 miles. The Claimant requested a travel allowance of \$225.00 (which the Organization contends is payable for 905 miles as a round trip for the Claimant's travel from Maricopa to Saint Michaels to Indio) which was denied. This claim followed.

We find that the claim lacks merit.

First, Rule 36, Section 7(a) provides:

“Section 7 - End of Work - Week Travel Allowance for Traveling Gangs.

- (a) 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 workweek. 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 Claimant’s trip from Maricopa to Saint Michaels to Indio is not a “round trip.”

Second, the Claimant was recalled to Gang 8527 as a Thermite Welder, which was a higher seniority class than the position he held on Gang 8532 as a Speed Swing Operator. Under Rule 23(e), had the Claimant not accepted the recall to the Thermite Welder position, he would have forfeited his Thermite Welder seniority:

**“RULE 23 - RESTORATION OF FORCE**

\* \* \*

- (e) Employees regularly assigned to a lower class who are recalled to a higher seniority class must return to such higher class at the first opportunity or forfeit seniority therein. Such employees will be released to report to the higher class position on the first day of the assignment’s regular work week or as soon as provisions can be made, but, in no event, will the employee be held on the former position for more than ten (10) calendar days from date of assignment.”

By accepting the recall to the higher rated Thermite Welder position on Gang 8527, the Claimant was exercising his seniority rights.

Third, RULE 18 - EXERCISE OF SENIORITY reads, in relevant part, as follows:

“Employees accepting positions in the exercise of their seniority rights will do so without expense to the Company, except as provided under Rule 37.”

Because the Claimant exercised his seniority rights when he accepted recall to the higher-rated position of Thermite Welder on Gang 8527, under Rule 18(b), he had to do so “without expense to the Company.”

In sum, the requirement for a “round trip” under Rule 36, Section 7(a) and the further requirement that the exercise of seniority rights must be accomplished “without expense to the Company” under Rule 18(b) bar the Claimant’s travel allowance claim. See Public Law Board No. 7156, Award 7 between the parties (with this Neutral) [footnotes omitted]:

“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. . . . Rule 17 provides:

Rule 17:

Employees accepting a position, in the exercise of their seniority rights, will do so without causing extra expense to the railroad.

\* \* \*

Clearly, given Claimant’s mileage request, Claimant’s request for mileage resulting from the exercise of his seniority rights from Gang 8896 to Gang 9161 causes extra expense to the Carrier. Rule 17 bars that request.”

See also, Third Division Award 39532 between the parties:

“. . . We do not find any support for the Organization’s claim that the Claimant’s trip from Kansas City to Hempstead, Texas, to

Houston constituted a 'round trip' under the meaning of either the Agreement or the dictionary. We are entirely in accord with the findings of the Board in Third Division Award 37987, which held, in pertinent part, as follows:

'In the Claimant's case, he did not return on April 24 to the gang he had traveled from on April 20, 2000. Instead, he traveled to a second gang on which he had been awarded a position by bid. In these circumstances, the Claimant did not make the round trip contemplated by Article XIV, Section 1. Nor was the Claimant traveling to or from a gang location at the beginning or end of the work season. The Claimant's travel does not fall within the criteria established by Section 1 and the Claimant therefore is not entitled to Section 1's travel allowance for his travel on April 20 and 24, 2000. The Board therefore must deny the claim.'

Awards cited by the Organization are not persuasive to require a different result.

Third Division Awards 38009 and 40465 do not specifically address the impact of language found in Rule 18(b) ("[e]mployees accepting positions in the exercise of their seniority rights will do so without expense to the Company, except as provided under Rule 37"). We note that although there was similar language in an internal 1991 Organization memo discussed in Third Division Award 40465, that language was found to have no determinative weight because it pre-dated the Agreement language relied upon for deciding the dispute and addressed per diem meal and lodging allowances and not travel allowances. If anything, there is language in Third Division 38009 and quoted in Third Division Award 40465 which supports the Carrier's position in this case:

"... [T]he 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.”

Rule 18(b)’s limitation that “. . . [e]mployees accepting positions in the exercise of their seniority rights will do so without expense to the Company, except as provided under Rule 37” is such a “. . . limiting condition . . . giving benefits only under express limited conditions.”

Special Board of Adjustment No. 1100 cited by the Organization (on another carrier) was a per diem allowance case. *Id.* at 8 (“[t]his dispute arose when, upon implementation of Article XIV, the Carrier discontinued payment of the per diem meal allowance provided for in Rule 38 on rest days when employees travelled home and were paid a travel allowance under Section 1 of Article XIV.”). That is not this dispute.

Arbitration Board No. 1114 cited by the Organization was a travel allowance dispute. However, the dispute in that case was over whether the travel allowances were to be paid “. . . for all employees who travel between their homes and varying successive work locations at the beginning and end of their work weeks” (*id.* at 8) or only to “. . . employees who work on regional and system-wide production gangs” (*id.* at 13). That is not this dispute.

Third Division Award 37053 cited by the Organization involved a dispute over the travel allowance due for the start up of a gang. That is not this dispute.

The Organization’s reliance upon this Neutral’s Award in Public Law Board No. 7156, Award 4 is also not persuasive. That dispute involved a claim over a per diem allowance and not a travel allowance and was sustained because (as quoted in PLB No. 7156, Award 7, above) the governing Rule 17 provided that “[e]mployees accepting a position, in the exercise of their seniority rights, will do so without causing extra expense to the railroad” [Emphasis added]. In PLB No. 7156, Award 4 there was no “extra expense to the railroad” because the two gangs in that case (the gang from which the claimant therein was assigned and then the gang to which he moved) had the same schedules and the same payments would have been made on either gang. Rule 18 in this matter provides that “[e]mployees accepting positions in the exercise of their seniority rights will do so without expense to the

Company, except as provided under Rule 37” [Emphasis added]. Here, although under pain of forfeiture of his Thermite Welder seniority as required by Rule 23, the Claimant nevertheless exercised his seniority rights when he accepted recall to the higher-rated Thermite Welder position on Gang 8527. Under Rule 18, the Claimant’s travel for movement to Gang 8527 had to be “. . . without expense to the Company. . . .” [Emphasis added].

The claim lacks merit and, therefore, must be denied.

**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 23rd day of August 2011.