

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41382
Docket No. MW-40378
12-3-NRAB-00003-080180**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington
(Northern 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 Mr. L. Radtke the travel allowance for the week-end travel made from his mobile headquarters at Aberdeen, South Dakota to his residence at Montpelier, North Dakota and returning to Aberdeen, South Dakota on November 26 and December 1, 2003 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (System File T-D-2714-W/11-04-0103 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Radtke shall now be paid the week-end travel allowance in the amount of twenty-five dollars (\$25.00), as well as interest on said amount at eight percent (8%) per annum, compounded monthly from the date of the initial claim.”**

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.

Rule 38, Section II.A, of the parties' Agreement provides for employees whose work takes them far from home to be paid a "Week-End Travel Allowance" under certain circumstances:

"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 work week. Accordingly, the carriers will pay each employee a minimum travel allowance as follows for all miles actually traveled by most direct highway route for each round trip:

0 to 100 miles	\$ 0.00
101 to 200 miles	\$ 25.00
201 to 300 miles	\$ 50.00
301 to 400 miles	\$ 75.00
401 to 500 miles	\$100.00

Additional \$25.00 payments for each 100 mile increments. [9/26/96
National Agreement, Article XIV]"

In this case, the Carrier refused to pay the week-end travel allowance to an employee who traveled home for the weekend from his assignment on one mobile gang and reported back after the weekend to a different mobile gang due to a "voluntary" displacement. In late November 2003, the Claimant had been assigned to Mobile Gang TRWX0646, but had been displaced from that gang. He exercised his bumping rights to move to Mobile Gang TRWX0721 effective the start of work on December 1, 2003. On November 26, 2003, he ended his service on Mobile Gang TRWX0646 and

traveled from his work site at Aberdeen, South Dakota, to his residence in Montpelier, North Dakota, a distance of 94 miles. He reported to work after the weekend to his new gang, Mobile Gang TRWX0721, which was also located in Aberdeen. When the Claimant claimed the \$25.00 travel allowance for the 188 miles he had traveled, the Carrier refused to pay him, because he had changed gangs:

“... Travel allowance payments are only valid for mileage traveled when returning home on week-ends and retuning to a position on the same gang. This clearly was not done with Claimant exercising seniority from one gang to another. Also, one-way trips do not qualify for weekend Travel Allowance with the exception of the start up of a gang or the abolishment of the entire gang. Claimant has been properly compensated.”

From the Carrier's perspective, the Claimant's trip was not a round-trip, because he reported off from one gang and reported to a different one.

There is no dispute that the Claimant made the round-trip between Aberdeen and Montpelier, for which he sought the week-end travel allowance.

The Organization filed this claim by letter dated December 11, 2003. According to the Organization, Article XIV, Section 1 of the September 26, 1996 National Agreement (Rule 38, Section II,A of the updated Agreement) clearly and unambiguously provides that employees making weekend trips of the sort made by the Claimant are entitled to receive a travel allowance in accordance with the payment schedule set forth in the above-quoted Agreement provision. The Claimant made a round-trip between Aberdeen and his residence. The fact that he changed gangs is immaterial; the Carrier's position is neither explicit nor implicit in Article XIV. There is no exception in the provisions of Article XIV or Rule 38 for this type of situation. The Claimant should be paid the travel allowance, as well as interest due to the Carrier's repeated and flagrant violation of the Agreement in this regard (citing prior Board Awards).

According to the Carrier, its actions are entirely consistent with Article XIV and its requirements. The travel allowances provided in the parties' Agreement were not intended to cover all travel expenses, nor were they intended to subsidize an employee's voluntary abandonment of his gang, as occurred here. Article XIV provides compensation for one-way travel only at the start up and break up of a gang,

and round-trips made during the gang's work season between the gang's location and the employee's home. In the instant claim, the Claimant did not make a round trip – he made two one-way trips, one off of one gang and the other onto a different gang. The weekend travel allowance was designed to make work on production gangs more attractive, but not to subsidize employees who leave their gang for other assignments, especially in an exercise of seniority. The allowance was not intended as a job-hopping subsidy, because jobhopping tends to destabilize gang teamwork and lower productivity. Finally, no interest should be awarded.

The language of Rule 38, Section II.A, does not, on its face, require employees to leave and return to the same gang. The preamble acknowledges that during the work season, employees may find themselves far from home at the end of the workweek. Section II then goes on to state: “Accordingly, the carriers [sic] will pay each employee a minimum travel allowance as follows for all miles actually traveled by most direct highway route for each round trip. . .” Section II.B provides a one-way travel allowance “at the start up and break up of a gang.” It seems clear that the intent of Sections II.A and II.B together was to provide “wall-to-wall coverage” of travel expenses for employees as they travel to and from home and their assigned gang from the start of the work season to its end. The Carrier contends that the travel allowance is limited to trips to and from the same gang in order to discourage “job hoppers” who bid to move from one gang to another, and it submitted prior Awards in support of that position. (See Third Division Awards 37987 and 37994.)

The facts of this case are different from those set forth in Awards 37987 and 37994. It appears that the employees in those cases had bid off one gang and onto another voluntarily. In the instant case, the Claimant was involuntarily displaced from his original gang. He literally could not return to his original gang, for reasons outside his control. He had to bid or displace onto another gang. Someone who has been displaced by another employee's actions can hardly be characterized as a “job hopper.” If anything, he is the victim of a job hopper.¹ The Claimant traveled round trip over the weekend between his assigned gang and his residence. His assigned gang changed over the weekend, but only because he was bumped off of his original gang. The Carrier contends that the Claimant's move was “voluntary” because he elected to exercise his seniority to displace onto a different gang. Such an interpretation elevates

¹ In fairness, the person who bumped the Claimant from his original gang assignment may himself have been bumped from his original assignment, and so on down the chain of seniority. A domino effect is inherent in seniority rights.

form over substance, and would penalize an employee who simply wants to keep working.

Section II.A simply does not address the situation posed in this case. The Carrier argues for a narrow interpretation of the provision that would limit the travel allowance strictly to employees who start and stay with one gang, regardless of the reasons why they might have to leave and move to another gang. But the introduction to Section II.A establishes a broad purpose for the travel allowance, to provide reimbursement for employees' expenses as they travel to and from their homes over the weekends during the work season. That broad purpose suggests that individuals like the Claimant, who have been displaced from their gangs through no action of their own, should not thereby be penalized. His round trip was between his assigned gang and his home, and he is entitled under Section II.A to a travel allowance for the trip.²

The Carrier also relies for its position on the "Shappaugh Letter," which was written by an arbitration specialist for the Organization in 1991, and concluded that employees who had been furloughed from one gang on a Friday and did not start their assignment with another gang until the following Monday were not entitled to per diem expenses over the weekend. The Letter is not applicable to this case. The employees there were seeking to be paid per diem meal and lodging for a period when they were off-duty between assignments. The Letter concluded, correctly, that the employees were not entitled to be paid per diem when they were not on assignment. This case presents an entirely different factual scenario, involving travel expenses between home and work for employees who are assigned to gangs. The Claimant is not seeking to be paid for expenses while he was not working, and the Shappaugh Letter is simply inapplicable to this situation. (See also, Third Division Award 40465.)

The Organization seeks not only to have the Claimant paid the travel allowance that he was denied, but also interest for the period since his claim was denied. Tacitly acknowledging the general rule that interest is not payable in arbitration, the Organization seeks to have interest paid here because the Carrier's defense is "frivolous" and it has been a "flagrant and repeated violator of the Agreement." This case is distinguishable from the Awards cited by the Organization, which were

² The Board wants to make clear that this Award is limited to the specific facts of this case and is not intended as a broad interpretation of Rule 38, Section II.A, applicable to all "traveling employees." The only case before the Board is this one, with its unique facts, and that is the only case the Board is deciding.

essentially class actions involving large numbers of employees. This claim involves one employee and his \$25.00 travel allowance. The Organization has not established that the Carrier's defense was frivolous or that it has been a flagrant and repeated violator of Section II.A. Accordingly, the Organization's request for interest is denied.

AWARD

Claim sustained in accordance with the Findings.

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 25th day of July 2012.