

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41809
Docket No. MW-42172
14-3-NRAB-00003-130112**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Springfield Terminal Railway 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. R. Principato the Rule 27 per diem for January 24, 2012 when he performed work in conjunction with a production crew (Carrier’s File MW-12-10).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Principato shall now be paid the one (1) day per diem in the amount of forty-three dollars (\$43.00).”**

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.

This claim seeks payment of a \$43.00 per diem allowance on behalf of Welding Crew 3641 Foreman R. Principato, who was headquartered in Waterville, Maine, for his work of cutting joint bolts so that Scrap Crew 726 could dispose of a rail production crew's scrap rail, as well as providing track authority services on January 24, 2012, as part of his regular tour of duty. It is undisputed that Scrap Crew 726 received per diem for that day, whereas the Claimant did not.

The following provisions of the parties' Agreement are relevant to a resolution of the Claimant's entitlement to a per diem allowance for January 24, 2012.

Article 27. Production Crews

"27.7 Members of maintenance crews will be entitled to payment as provided in paragraph 27.13 if they perform work in conjunction with a production crew. In addition they will be provided the same payment if they perform production work in excess of; 85 spiked ties per day, surfacing more than 750 feet of track or installing more than 800 feet of continuous welded rail. It is understood that maintenance crews time will begin and end at their assigned headquarters and the Carrier will provide transportation to and from the work site.

27.13 Employees assigned to positions on Production Crews will be allowed per diem expenses each day worked for meals, lodging, and travel as follows:

January 1, 2012 \$43.00"

The Organization argues that the Claimant was working "in conjunction with" a production rail gang, and that the work he performed was integrated with their operation, entitling him to per diem for that day pursuant to Article 27.7, citing Public Law Board No. 5606, Awards 35, 79 and 83. It asserts that the Scrap Crew was working as a production crew that day without an assigned Welder, and that it would not have been able to pick up rail without the Claimant cutting the joint bolts and providing protection, making his work integral to the performance of the rail gang's function. The Organization notes that the same arguments made by the Carrier in this case were resolved against it in Public Law Board No. 5606, and

that the findings of PLB 5606 regarding the intent and application of Article 27.7 should be adopted herein.

Conversely, the Carrier contends that Article 27.7 was never intended to authorize the payment of per diem - compensation for meals, lodging and travel - to employees such as the Claimant, who (1) report to headquarters, (2) drive a company truck to a job site, (3) perform the normal functions of his bid position, and (4) return to headquarters at the end of the day without incurring any expenses for which per diem reimbursement is contemplated. It argues that the Claimant was not performing an integral part of the production crew's work, but was welding, which was neither production work, nor performed in conjunction with the crew. The Carrier distinguishes the facts of this case involving a Welder, from PLB 5606, Award 35 - dealing with an I&R Foreman actually performing production work as part of the crew, and Awards 79 and 83 involving Work Equipment Repairmen (WER) assigned to repair and maintain the equipment of the production crew during their work hours - as situations where the individuals could not be separated from the production crew, unlike the Claimant in the instant case. The Carrier calls the Board's attention to the "slippery slope" involved with finding this situation to constitute working "in conjunction with" a production crew, rather than just working around the crew performing work incidental to their work, but not an integral part of it, and questions which employees would not fit within such an expanded interpretation of Article 27.7, which was intended by the parties to cover only production crews performing production work.

A careful review of the record convinces the Board that the arguments of the parties concerning the proper interpretation of the phrase "in conjunction with" contained in Article 27.7, which is the underlying issue in this case, were dealt with specifically in PLB 5606, Awards 35 (2005) and 79 (2012). In sustaining the claim in Award 35, PLB 5606 held:

"In the opinion of the Board, the contract language contained in Article 27.7, *supra*, 'in conjunction with,' . . . is meant to recognize that members of maintenance crews will be entitled to the per diem allowance if they perform work in conjunction with, or concurrent with, the work of a production crew. In other words, it need not involve the same work as that being performed by the production crew, but work necessary to completion of the work of the production crew on a particular task or project.

* * *

. . . since the record shows Claimant was specifically sent to the project location for the purpose of performing work necessary or critical to the initiation and completion of project work by a production crew, it must be concluded that on the date at issue Claimant was assigned to work in conjunction with the production crew.”

In Award 79, PLB 5606 sustained the claim therein stating:

“The principles set forth by the Board in above cited Award No. 35 are likewise applicable to the facts and circumstances in the instant case. Although not an assigned member of a production or surfacing crew, Claimant was clearly assigned to work in conjunction with the production crews for the purpose of performing repair work on equipment, machinery and tools utilized by the production crews while at the work site. This was work necessary and critical to the performance and completion of the work of the production crews during the period of the claim at issue.”

The Board finds that the conclusions concerning the interpretation of Article 27.7 set forth above are reasonable - not palpably erroneous - and, as such, are adopted as equally applicable herein. That being said, they must be applied to the facts of the particular case. As noted by the Carrier, the facts in this case are not the same as those in Award 35, where it was found that the I&R Foreman was actually performing production work as part of the crew, or as those in Awards 79 and 83, where the WERs were assigned to maintain the equipment of the production crews involved. There have been no prior claims seeking per diem for a Welding Foreman performing the type of work here involved. However, applying the standard that work “in conjunction with” a production crew is work necessary and critical to the initiation and completion of the production crew’s project work, the Board finds that the Claimant’s work of cutting joint bolts so as to enable the Scrap Crew to dispose of the production crew’s scrap rail is work that is integral to the performance of the rail gang’s function and meets the definition of working “in conjunction with” the production crew so as to qualify the Claimant for per diem entitlement for that day. The fact that the Claimant did not incur the expenses that

the per diem payments were intended to cover, reported to headquarters, and drove himself to the work site in a company truck, does not change the result. See, PLB 5606, Award 35.

AWARD

Claim sustained.

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 27th day of February 2014.