

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32714
Docket No. MW-32196
98-3-94-3-623**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.**

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 Grinder Operator M. Babbitt the \$35.00 extra pay per diem allowance for January 9, 1994 as provided within the provisions of Rule A-11 of the Craft Specific Provisions (System File MRL-107).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall be required to compensate Claimant M. Babbitt the \$35.00 per diem allowance.”**

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 dispute concerns the interpretation of Rule A-11(C) which provides:

"All employees assigned to mobile crews, with or without outfit cars, who are required to travel 80 miles or more from the siding on the railroad closest to their residence to the assembling point of such mobile crew at the beginning of the assigned workweek, will be allowed one (1) additional day's reimbursement at the applicable daily stipend rate to help defray the additional travel and lodging expenses."

The facts are not in dispute. Claimant bid on and was awarded a position as a Grinder Operator on Mobile Gang 1960 with his first day of work as January 10, 1994. At that time, Mobile Gang 1960's assembling point was Plains, Montana, which was more than 80 miles from the siding of the railroad closest to Claimant's residence. Claimant claimed the extra day's per diem allowance, but Carrier denied it on the ground that Claimant had not been working on Gang 1960 the previous week.

The Organization contends that the denial of the per diem violates the plain meaning of Rule A-11(C). Carrier, however, contends that Claimant was not assigned to Gang 1960 until he actually began work on January 10, 1994, and, therefore, he was not entitled to the extra day's per diem. Carrier further contends that Claimant was not required to travel 80 miles or more because he voluntarily bid for the position. In Carrier's view, Claimant was not required to travel 80 or more miles until he actually reported for duty.

Carrier's position flies in the face of the clear and unambiguous meaning of Rule A-11(C). The plain meaning of the word "assigned" is allocated or appointed. As of January 9, 1994, Claimant had been assigned to Mobile Gang 1960, although the assignment did not begin until January 10. To suggest otherwise would mean that Claimant could have not reported for duty at Plains, Montana, on January 10, 1994, and not been charged with failure to protect his assignment. Mobile Gang 1960 was his assignment when he traveled to Plains.

Similarly, if Claimant was not required to travel to Plains, then he could have decided not to report on January 10 with impunity. Such, of course, is not the case. Although Claimant was not required to bid on the vacancy, once he was awarded the position, he was required to travel to the gang's assembling point.

Carrier maintains that since 1991 it has followed the practice of requiring employees to work in the distant location the week before in order to qualify for the extra per diem and that the Organization has not objected. Past practice can provide very significant evidence of the parties' intent where contract language is ambiguous. In the instant case, however, the Agreement language is plain and unambiguous and the alleged past practice cannot be used to contradict it.

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 19th day of August 1998.