

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35576  
Docket No. MW-35104  
01-3-98-3-850**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis 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 Maintenance of Way Mobile Crew employees D. Sark and J. Bloom their daily stipend of forty-one dollars (\$41.00) for August 3, 1997 as provided within the provisions of Rule A-11 of the Craft Specific Provisions (System File MRL-139).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Sark and J. Bloom shall each be compensated a forty-one dollar (\$41.00) daily stipend as provided in Rule A-11.”**

**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.**

During the time period relevant to this claim, the Claimants were assigned by bulletin to a mobile crew working Monday through Friday, with Saturday and Sunday as assigned rest days. Gangs that are not bulletined and assigned as fixed headquarter gangs are classified as mobile crews and assigned headquarter points in either Carrier provided mobile lodging or motels. As such, they receive a daily stipend in accordance with Rule A-11, which provides in pertinent part as follows:

**“B. If the Company chooses not to provide mobile lodging facilities for a crew assigned with mobile headquarters, employees assigned thereto will receive a daily stipend of \$35.00 per day for each day worked in lieu of such mobile lodging facilities . . .”**

It is undisputed that the mobile crew stipend was increased to \$41.00 in the parties' October 3, 1994 Letter of Agreement.

On Sunday, August 3, 1997, the Claimants, who live in Helena, Montana, were observing a rest day when they were called to perform overtime service at West End, Montana, to weld switch plates. The employees assigned to the headquarters crew at Helena, Montana, were responsible for the work at West End, but they did not respond when called for this overtime service. The Claimants reported and performed the work and then returned to Helena where they went off duty.

Although the Claimants were compensated for the weekend rest day work at the appropriate overtime rate, they were not paid the mobile crew daily stipend for August 3, 1997. The Organization contends that Rule A-11B is clear and unambiguous in providing for a daily stipend for each day worked by an employee assigned to a mobile crew. Here, the Claimants were assigned by bulletin to a position that entitled them to per diem payments “for each day worked.” Sunday, August 3, 1997 was a “day worked” for the Claimants. In performing that overtime work, they did not change assignments, the Organization points out. Therefore, the Claimants were entitled to receive the benefits and conditions of the position to which they were assigned. The Organization asserts that the Board must enforce the provisions as written and sustain the claim.

The Carrier, on the other hand, submits that Rule A-11B does not mandate payment of the daily stipend in the instance presented by this claim. The Carrier argues that, in working the overtime assignment on August 3, 1997, the Claimants were entitled to receive the benefits and conditions of the positions for which they were called.

Because the welding crew at Helena has a fixed headquarters point, the language of Rule A-11, which applies to mobile crews, is inapposite. The Carrier contends that on the claim date, the Claimants did not perform any service on the mobile gang, nor did they lose any opportunity to perform service on the mobile gang on that date. They were not required to be away from home overnight. Consequently, they did not qualify for the per diem payments.

It is a principle of contract construction, relied upon by the Organization here, that where the terms of a contract are unambiguous any party has the right to insist upon compliance with its terms. Contract language that is clear and free from ambiguity, by definition, is not subject to more than one interpretation and must be enforced as written.

Based on our careful review of the language of Rule A-11B and the plausible arguments advanced by both parties as to its interpretation, we are not convinced that the Organization's position is well-founded in this instance. It is the Board's view that the language is ambiguous at best. The Organization relies on the phrase "for each day worked" as the basis for concluding that the Claimants are entitled to the per diem stipend. However, while that phrase may appear to be definite and clear when read as an isolated part, it takes on a different meaning when read, as we must, in the context of Rule A-11B as a whole.

Rule A-11B provides for mobile lodging facilities for crews assigned with mobile headquarters. If mobile lodging facilities are not provided, then mobile crew employees receive a daily stipend "for each day worked in lieu of such mobile lodging facilities." The language suggests that the per diem expense allowance is paid, not simply because the crew worked, but because they worked at a mobile location where they were provided a payment to obtain lodging. That circumstance does not apply to the instant case.

It was the Organization's burden to prove that the Agreement provisions were violated. Absent any evidence on this record in the form of established practice or history that would support the conclusion that the parties in the past have interpreted the Agreement as the Organization now claims, we must conclude that the Organization has not met that burden. The language of the Agreement, standing alone, does not establish the Organization's position, and therefore we must rule to deny the claim.

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**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 24th day of July, 2001.**

LABOR MEMBER'S DISSENT  
TO  
AWARD 35576, DOCKET NO. MW-35104  
(Referee Kenis)

The Neutral Member has clearly made a mistake in this case. Whether that mistake was solely because of clever and misleading advocacy by the Carrier or whether a wholesale misinterpretation of Rule A-11B was present is unclear. The pertinent rule at issue here is Rule A-11B which reads:

“B. If the Company chooses not to provide mobile lodging facilities for a crew assigned with mobile headquarters, employees assigned thereto will receive a daily stipend of \$35.00 per day for each day worked in lieu of such mobile lodging facilities.”

Award 35576 is in direct conflict with the plain language of Rule A-11B. A plain reading of the above-cited rule states that when the Carrier does not provide lodging facilities for employees assigned to such gangs, those employees will receive a daily stipend of \$35.00 (now \$44.00) for each day worked. There is no requirement in the rule for such employees to be at a mobile location as is suggested by the Carrier. In this case, the Claimants were called to perform welding work because the regularly assigned crew was not available. The Carrier's position was that the Claimants assumed the assignment of the welding crew assigned to Helena, Montana. Merely by responding to the overtime call to perform work at Helena, Montana did not change the fact that the Claimants were assigned by bulletin to a mobile crew that was headquartered elsewhere. The important factor here is that the Claimants were not assigned by bulletin to perform work at

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Helena, Montana, but were assigned to a mobile crew receiving Rule A-11B benefits. Those benefits are payable whether the employees are working at or near their residences or working hundreds of miles away.

It is beyond question that the capable Neutral Member was misled in this case. It is clear that the outcome is palpably erroneous and therefore has no precedential value. What the eventual ramifications of this decision remains to be seen. It very well could result in employees receiving the benefits of Rule A-11B avoiding overtime calls on their rest days.

Therefore, I must respectfully dissent.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roy C. Robinson". The signature is fluid and cursive, with a large initial "R" and "C".

Roy C. Robinson  
Labor Member