Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36810
Docket No. MW-36311
03-3-00-3-500

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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 M. J. Helbig a travel allowance for the trip made on March 13 and 14, 1999 as provided in Article XIV, Section I of the September 26, 1996 Mediation Agreement (System File J-9933-155/1196024).

(2)As a consequence of the violation referred to in Part (1) above, Mr. M. J. Helbig shall be allowed a travel allowance of two hundred twelve dollars and fifty cents ($212.50)."

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.

The Claimant is seeking reimbursement under Article XIV for travel from his home in Genoa, Nevada, to Rawlins, Wyoming, on March 13 and 14, 1999. Article XIV states in pertinent part:

"Section 1

(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. . . the carriers will pay each employee a minimum travel allowance . . . for all miles actually traveled by the most direct highway route for each round trip: . . .

(b) At the start up and break up of a gang, an allowance will be paid after 50 miles, with a payment of $12.50 for the mileage between 51 and 100 miles."

The substance of this claim is the allegation that the Claimant utilized his personal vehicle in full application of the above Article. The Claimant alleges that he drove more than 800 miles from his home to the start up location of System Gang 9001 in Rawlins, Wyoming. He further states that when he reported to the initial start up point of the Gang, he was told by the Time Keeper and by Manager of Track Programs Calloway that he should submit his time claim and that he would receive payment. The Claimant submitted his mileage, but he was not compensated.

The Organization maintains that regardless of the Claimant's bid to the position as a Laborer on Gang 9001, "this was the start up of the work season for Claimant." It further points out that the Carrier had changed the consist of old Gang 9001, by adding 58 new positions on the same date of March 15, 1999. This substantially expanded and in essence created "a completely new gang with the original number of 9001." The Organization maintains that the Claimant was properly due payment and informed that he would be paid due to the start up of the Gang, and he was improperly denied payment.

The Organization is the moving party to this claim and must initially establish all of the foundations of its position. The record clearly shows that the Claimant was furloughed and bid to the position as a Laborer on Gang 9001. There were 58 vacancies to be filled, but the Organization does not rebut the Carrier's Labor Distribution Report indicating that the numbers on the Gang changed as projects and movement of the Gang changed. What is most important is that there is no proof that this was the "start up" of System Gang 9001, and in fact, the Carrier has shown that it was not the start up of the Gang. Further, with regard to the argument that this was "the start up of the work season for Claimant," the language refers to the "start up and break up of a gang" without reference to an individual employee. The Carrier maintained that the Claimant bid to an existing Gang and there is no proof to the contrary. The Organization does not refer to the language applicability indicating that payment was for "each round trip" and that Article XIV language clearly lacks applicability to this claim for a one way payment from his home to the initial reporting location.

The Board also notes that the Carrier defends its actions under Rule 18 arguing that no compensation is due an employee who is exercising seniority. The Board finds this on point inasmuch as Rule 18 states that "Employes accepting positions in the exercise of their seniority rights will do so without expense to the Company. . . ." The Claimant exercised his seniority to Gang 9001 and further states that he again exercised his seniority off of Gang 9001 to Gang 9007.

The Board must also point out that the Agreement language takes precedence over any statements made by the Time Keeper or Manager of Track Programs. When, as here, there is no proof of vague language or past precedent, the contract language must prevail.

Accordingly, Article XIV does not provide for the one-way travel allowance for the Claimant in this instance, inasmuch as it applies to "miles traveled for each round trip." The above stated language requires that this be the start up or break up of a gang, not the initial meeting of an employee who exercised seniority to a new gang. The Board finds no proof that the Carrier violated the Agreement. The claim is 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 29th day of December 2003.

LABOR MEMBER'S DISSENT
TO
AWARD 36810, DOCKET MW-36311
(Referee Marty E. Zusman)

The Majority clearly erred when it rendered its decision in this case and a dissent is therefore required.

This case involved the interpretation of Article XIV of the 1992 National Agreement, specifically to Section 1(b). In this case there was no dispute but that the Claimant was coming off of furlough at "... the beginning of the work season ***" as specified in Section 1(a). His one-way travel from his home to the initial reporting location was eight hundred twenty-eight (828) miles. The Claimant began his travel on March 13, 1999 and reported for duty on March 15, 1999. On March 15 and 16, 1999, the Claimant attended start-up training classes. The intent of Article XIV is to allow some monetary relief to employes, as the Claimant in this case, who travel "*** hundreds of miles from their residences. ***" as stated in Section 1 of said Article. Initial reporting allowance, as is the subject of this claim, is to be paid each employe who began their work season "*** hundreds of miles away from home. ***" The very fact that fifty-eight (58) new positions were bulletined to the gang should have been sufficient evidence that the complexion of the gang had been altered and that it was the start up of the gang. However, whether this was the start up of the gang or not, is immaterial to the incontrovertible fact that the Claimant was reporting to his **initial** reporting location for the years work season.

Second, the Majority has completely misinterpreted Article XIV as it relates to Rule 18 of the Agreement. Clearly, Article XIV is a special rule and Rule 18 is a general rule. This Board has consistently held that a special rule takes precedent over a general rule. Inasmuch as such is the case, Article XIV clearly provides for a travel allowance for employes who travel "*** hundreds of miles from their residences. ***" in the service of the Carrier. Unquestionably Rule 18 is amended, insofar as it speaks to the exercise of seniority is concerned, by the clear language of Article XIV. In this particular instance Article XIV provides travel allowance to employes who work far from home insofar as the initial reporting location is concerned. The very fact that the language of Article XIV allows for the travel allowance at beginning of the work season for employes who are required to travel from their homes to the initial reporting location supersedes the language of Rule 18. This is not a claim wherein the Claimant was already working elsewhere, bid on an existing gang and claimed travel allowance to that gang. There is no dispute but that the Claimant was furloughed and began his work season on this gang.

This award is palpably erroneous and I, therefore, dissent.

Respectfully submitted,

Roy C. Robinson
Labor Member

CARRIER MEMBERS' RESPONSE
TO
LABOR MEMBER'S DISSENT
TO
AWARD 36810, DOCKET MW-36311
(Referee Zusman)

The Labor Member's dissent is "palpably erroneous" – not the Majority's decision. The Organization supplied no relevant facts during the 15 months of on-property handling to support its interpretation of Article XIV. Given that 57 similar seasonal employees reported for work along with the Claimant on March 15, 1999 (with no claims filed on their behalf) and hundreds, if not thousands, of other seasonal employees have reported for work since Article XIV's implementation in September 1996, it is hard to believe that the Organization could not come up with at least one other example on the entire Union Pacific Railroad to substantiate its claim and assertions regarding Article XIV. Thus, there is no reason to doubt the Majority's conclusion that, "The Board finds no proof that the Carrier violated the Agreement."

The dissent also ignores the fact that the plain language of Article XIV allows payments only for one-way travel when an employee is driving to or from the respective start up or break up of a gang. The instant claim fails because the Claimant was reporting to an already existing gang. If the Organization desires the Carrier to pay for one-way trips to existing gangs, then it should bargain for this benefit.

The dissent erroneously asserts that Article XIV somehow takes precedence over Rule 18 because the former is more specific than the latter. Rule 18 states that an employee's exercise of seniority is at their own expense. Then, after they have initially reported, they are entitled to the allowances provided in Article XIV. Aside from the limited exception within Article XIV allowing reimbursement for travel associated with the "start up or break up of a gang," the parties agreed that employees must shoulder the costs associated with the initial exercise of their seniority. Because the Claimant was exercising his seniority to a position not relating to the start up or break up of a gang, Rule 18, and not the exception within Article XIV, applies to the Claimant's circumstances.

The instant claim was unfounded in fact and premised on a strained interpretation of the Agreement. The Majority's decision is correct.

Bjarne R. Henderson

Martin W. Fingerhut

John P. Lange

Michael C. Lesnik