Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37053
Docket No. MW-36208
04-3-00-3-357

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(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 G. J. Morgan a travel allowance for the trip made on January 25, 1999 as provided in Article XIV, Section 1 of the September 26,1996 Mediation Agreement. (System File J-9936-64/1187970).

(2) As a consequence of the violation referred to in Part (1) above, Mr. G. J. Morgan shall be allowed a travel allowance of two hundred twenty-five dollars ($225.00)."

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.

The initial claim on the property dated March 19, 1999, alleged that, pursuant to Article XIV Section 1(b) of the National Agreement of September 26, 1996, the Claimant was entitled to a $425.00 Gang Start Up Allowance ". . . at the beginning of the work season for (1) one trip made from his residence at Prewitt, New Mexico to the work location on Gang 9013 at Jamesport, Missouri. . . ." Through subsequent correspondence during handling on the property, specifically in its May 8 and May 15, 2000 letters, the Organization concurred with the Carrier's position that the amount claimed and the number of the System Gang were inaccurate, i.e., that the proper System Gang number was 9011 instead of 9013 and the appropriate amount of one-way mileage was 964 instead of 1,738 miles. The claimed travel allowance amount was adjusted downward to $225.00 on appeal and there is no indication that either Party was prejudiced by the correctable errors. Accordingly, the record in this case is readily distinguishable from those in which the Board has granted a Carrier's motion to dismiss the claim with prejudice due to material prejudicial modification on appeal. See Third Division Award 25967; Cf. Awards 3256, 6115, 6842, 10639, 12465, 14633, 14747, 19035, 20841, 25061, 26519 and 29230.

At the beginning of each work season, the Carrier bulletins and assigns positions for various System Production Gangs (tie, surfacing, etc.) throughout its territory. In anticipation of the 1999 work season, the Carrier bulletined and assigned positions for System Gang 9011 in late 1998. In its original iteration, that particular gang was assigned to work a Monday through Thursday workweek, ten hours per day, with Friday, Saturday and Sunday designated as rest days. As initially bulletined, said gang began work on or about January 4, 1999, a time when Claimant G. J. Morgan, who had established and held seniority in various classes within the Track Subdepartment, was in furlough status.

After just two weeks, however, the Carrier rebulletined the four-day positions of System Gang 9011; using the same System Gang number but changing the workweek and hours to Monday through Friday from 7:30 A.M. until 4:00 P.M., with Saturday and Sunday designated as rest days. Only about ten of the incumbents of the originally bulletined four-day-position of System Gang 9011 elected to remain on the rebulletined five-day-position of System Gang 9011. The Claimant bid on one of the advertised System Gang Laborer positions and, by assignment bulletin effective January 21, 1999, was awarded one of 26 Laborer

positions. As thus reconstituted, System Gang 9011 began working the new five-day schedule effective January 25, 1999.

On Monday, January 25, 1999, the Claimant reported to the start up location of reiterated System Gang 9011 at Jamesport, Missouri, having traveled via personal vehicle from his home in Prewitt, New Mexico. The distance between Prewitt, New Mexico, and Jamesport, Missouri, via the most direct highway route is 964 miles. The Claimant filed a claim for travel allowance, invoking the language of Article XIV of the September 26, 1996 National Agreement which, in pertinent part, reads:

"ARTICLE XIV - TRAVEL ALLOWANCE

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. 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 the 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.

(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.

(c) Carriers may provide bus transportation for employees to their home area on weekends. Employees need not elect this option."

In the particular facts and circumstance presented on this record, we are persuaded that the Claimant was entitled by the language and the manifest intent of the above-quoted contract provision to receive $225.00 travel allowance.

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 22nd day of June 2004.

CARRIER MEMBERS' DISSENT
TO
THIRD DIVISION AWARD 37053 (Docket MW-36208)
(Referee Eischen)

The initial claim on the property dated March 19, 1999, alleged that, pursuant to Article XIV Section 1(b) of the Agreement of September 26, 1996, Claimant was entitled to the sum of $425.00, in connection with "one trip made from his residence . . . to the work location on Gang 9013. . . ." On May 8, 2000, 17 days before filing its Notice of Intent, the Organization conceded that the amount of the claim should have been $225. Even more importantly, on May 15, 2000, just ten days before filing its Notice of Intent, the Organization conceded the fact that Gang 9013 was not the Gang involved and changed the Gang to 9011. The Board should have dismissed the claim which was not the same as initially handled on the property. See Third Division Award 25967 (Eischen).

With respect to the merits the dispute involves Article XIV Section 1(b) of the 1996 Agreement. It provides:

> "(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. (Emphasis supplied.)

In the handling of the dispute on the property, the Carrier provided evidence that Gang 9011 was in existence at the time Claimant bid for a position on it and that the bulletin bid by the Claimant specifically stated that the bulletin was intended to fill existing vacancies caused by some employees transferring to other gangs. In addition, it should be noted that 26 employees were assigned to 34 member-Gang 9011 by bulletin at the time the Claimant was assigned. There is no evidence that anyone other than the Claimant filed a claim for travel allowance.

All that occurred in this dispute is that the hours of existing Gang 9011 were changed, many employees of the Gang bid off for other positions and the Claimant was a successful bidder for one of the existing vacancies. There is no evidence that the Agreement provided that such occurrence be considered "the start up" of a gang. The claim should have been denied on the merits - if reached. We dissent.

M F Fingerhut
Martin F. Fingerhut

Bjarne R. Henderson
Bjarne R. Henderson

J P Lange
John P. Lange

Michael C. Lesnik
Michael C. Lesnik

June 22, 2004

LABOR MEMBER'S RESPONSE
TO
CARRIER MEMBERS' DISSENT
TO
AWARD 37053, DOCKET MW-36150
(Referee Eischen)

The Dissent of the Carrier Members complains that the Board did not dismiss the claim because it was allegedly not the same claim as was progressed on the property. While it is true that there was a dispute insofar as what the gang number was and how many miles were driven by the Claimant, the matter was cleared up during the handling of the dispute on the property. The important point is that what was ultimately determined to be due the Claimant was completed during the on-property handling. It is clear that the Claimant did not change nor did the date of the claimed violation change. The monetary remedy was reduced and such did not change the subject of the initial claim, i.e., the Claimant was denied start-up allowance in accordance with Article XIV of the September 26, 1996 Mediation Agreement. Hence, the Carrier's protestations are nothing more than sour grapes.

Apparently, the Carrier is contending that because the Claimant was not fortunate enough to be awarded a position on the gang when the first bulletins went out, he is not entitled to start-up travel allowance when he eventually was assigned to the gang. In other words, the Carrier is contending that only those employes who bid on the original jobs are entitled to start-up travel allowance. Of course, the able neutral read through the Carrier's smoke screen and properly determined that the "manifest intent" of Article XIV travel allowance was that the Claimant was entitled to the start-up travel allowance.

Next the Carrier Members allege that no other employe laid claim to the start-up travel allowance. Whatever the relevance that has to this dispute is unknown. It could be that the other successful applicants could have been working on another gang connected with the same project and had already received start-up travel allowance; or they may not have traveled more than fifty-one (51) miles for the start-up travel allowance to be applicable; or they may have been paid the appropriate start-up travel allowance. We do not know the answers to those questions and because we do not does not make this claim invalid. The Majority's findings in this case are correct and sound. The Dissent is nothing more than a thinly veiled attempt to shroud the Carrier's blatant violation of the Agreement. The award is correct in every respect and I concur with the findings.

Respectfully submitted,

Roy C. Robinson
Labor Member