Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37987
Docket No. MW-36873
06-3-01-3-457

The Third Division consisted of the regular members and in addition Referee Joan Parker when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Santa Fe (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to pay C. D. Heidinger the travel allowance for the round trip made on April 20 and 23, 2000 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (System File T-D-2029-W/11-00-0333 BNR).

(2) As a consequence of the violation referred to in Part (1) above, Mr. C. D. Heidinger shall '. . . be paid the weekend travel allowance of $125.00. Since the Carrier has improperly withheld that allowance from the Claimant, we further request that Claimant receive interest on the amount of money claimed, at 8% per annum, compounded monthly from the date of this claim."

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.

At the time the instant matter arose, the Claimant was a Laborer working with mobile System Regional Gang TP-01 in Granite Falls, Minnesota. The Claimant's work days were Monday through Friday, with Saturday and Sunday rest days. On Thursday, April 20, 2000, the Claimant worked his shift, then traveled home to Jamestown, North Dakota, (280 miles by the most direct highway route). April 21, 2000, was Good Friday.

The Claimant had bid for and was awarded a job on another System Regional Gang located in Mitchell, South Dakota, effective Monday, April 24, 2000. On April 24, he traveled 250 miles by the most direct highway route to lodging in Mitchell. The Claimant submitted a travel allowance claim for 530 miles, which the Carrier denied.

The September 26, 1996 Mediation Agreement between the parties provides in pertinent part:

"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 increment.

(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. . . ."

On May 23, 2000, the Organization submitted a claim on behalf of the Claimant, which the Carrier denied. Having failed to reach a satisfactory resolution on the property, the parties have submitted the dispute to the Board for final and binding resolution.

The Organization contends that because the Claimant held a position on a mobile gang, he was entitled to a weekend travel allowance under Article XIV of the September 26, 1996 Mediation Agreement. According to the Organization, the plain intent of Article XIV, Section 1 is to provide a minimum travel allowance to employees who travel long distances between work and home in order to be with their families on weekends. To qualify for the travel allowance under Section 1, the Organization asserts, an employee need only be assigned to a mobile gang and travel by the most direct highway route. Having met both qualifications, the Organization submits, the Claimant is entitled to an allowance for his travel on April 20 and 24, 2000.

The Organization argues that if the parties had intended to limit Article XIV's travel allowance as the Carrier asserts, they would have done so in clear, unambiguous language. The Organization cites in support of its position Special Board of Adjustment No. 1114, asserting that Referee Kasher in that Award found that Article XIV's travel allowance applies to all employees who are assigned to a

mobile position and who "travel between their home and varying successive work locations at the beginning and end of their work weeks."

The Carrier argues that under the clear language of Article XIV, Section 1, the travel allowance provided is payable only if an employee is traveling from and returning to the same gang (a "round trip") or is traveling one-way at the beginning or end of the gang's annual work season. According to the Carrier, the Claimant's trips on April 20 and 24 constituted two one-way trips, not a round trip, because - rather than returning to Gang TP-01 in Granite Falls – the Claimant voluntarily left that gang to take a new position with another gang elsewhere. Therefore, the Carrier submits, the travel allowance provided by Section 1 is inapplicable to the Claimant's travel. The Carrier notes that the Organization cited no Awards supporting its interpretation of Article XIV. The Organization's reliance on Special Board of Adjustment No. 1114 is misplaced, the Carrier contends, because the only issue decided in that Award was whether Article XIV's travel allowance applied to local mobile gangs as well as regional and system gangs.

The Board finds the language of Article XIV, Section 1 to be clear and unambiguous. Section 1 provides for an allowance to be paid each employee for "all miles actually traveled by the most direct highway route for each round trip." (Emphasis added.) The common meaning of "round trip" is travel from and back to the same point (A to B and back to A). The Organization argues that because mobile gangs may change location so that a member reports to a new point after a weekend (A to B to C) and the travel allowance is payable then, the allowance should be payable to the Claimant in the instant case. The Board finds this argument to be without merit. It is clear from Section 1's language that "round trip" is defined in the context of the mobile gangs to which the provision applies as travel from and to the gang, wherever the gang may be at the time of travel. Mobile gangs, by definition, move to "varying successive work locations," as recognized in SBA No. 1114. Hence, at the beginning and end of the work season, there is an allowance "to travel from their homes to the initial reporting location" and to return home from a location that "could be hundreds of miles from their residences" depending on where the gang has moved. (Emphases added.) Similarly Section 1 states, "During the work season the Carriers' service may place them hundreds of miles away from home. . . ." (Emphasis added.) Section 1 does not contemplate travel from and return to a single geographic location but rather travel

from and travel to a single gang. That is the plain meaning of "round trip" as used by Section 1.

In the Claimant's case, he did not return on April 24 to the gang he had traveled from on April 20, 2000. Instead, he traveled to a second gang on which he had been awarded a position by bid. In these circumstances, the Claimant did not make the round trip contemplated by Article XIV, Section 1. Nor was the Claimant traveling to or from a gang location at the beginning or end of the work season. The Claimant's travel does not fall within the criteria established by Section 1 and the Claimant therefore is not entitled to Section 1's travel allowance for his travel on April 20 and 24, 2000. The Board therefore must deny the claim.

## 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 25th day of October 2006.

LABOR MEMBER'S DISSENT
TO
AWARD 37987, DOCKET MW-36873
AND
AWARD 37994, DOCKET MW-37070
(Referee Parker)

These cases involved the interpretation of Article XIV of the 1996 National Agreement. It is not the least bit surprising that the Carrier has taken the position it has in these cases when consideration is given to the history of Article XIV between these parties. As soon as the ink was dry on the 1996 National Agreement, the Carriers led a charge to eviscerate the provisions of Article XIV of Presidential Emergency Board (PEB) 229. The Carriers contended that Article XIV applied only to employes on regional or system gangs. Of course, the Maintenance of Way contended that all Maintenance of Way employes who had to travel far from home during their work week to perform service for the Carrier were entitled to Article XIV. That dispute resulted in the findings of Special Board of Adjustment (SBA) No. 1114, Referee Kasher. The Board held:

> "A lay person, not familiar with railroad industry maintenance of way jargon or terms of art, would justifiably conclude from reading Article XIV that any maintenance of way employee, who traveled between one of the various sets of mileage parameters found on page 34 of PEB 229's recommendations, would be entitled to the travel allowance payment for such trip."

and

> "Based upon the foregoing facts and findings, it is this Arbitrator's conclusion that the position of the BMWE must be sustained and that the travel

> "allowance benefits of Article XIV of the September 26, 1996 National Agreement apply to all traveling employees.
>
> **Award:** The position of the BMWE that the travel allowance benefits of Article XIV of the September 26, 1996 National Agreement apply to all traveling employees is sustained. ***"

Clearly, the findings of SBA No. 1114 upheld the Maintenance of Way's position that all Maintenance of Way employes who were required to travel away from their homes to perform service for the Carrier during their work week are entitled to travel allowance in accordance with Article XIV.

In these cases, the Claimants had been assigned to gangs that required them to travel away from home during the work week to perform service for the Carrier and the Carrier was obligated to compensate them for such travel. The Claimants received the travel allowance they were entitled to receive until such time as they bid to another gang that also required them to travel away from home during the work week to perform service for the Carrier. It was at the point when the Claimants moved from one gang to another that the Carrier refused to pay the Claimants travel allowance for the interim period when the Claimants moved between gangs.

The Carrier took the position that the Claimants were exercising their seniority when they moved from one gang to another and, therefore, it was not obligated to pay them the travel

allowance in such a circumstance. Without making a ruling on that aspect of the Carrier's position, the Majority in this instance determined that the key to the resolution of the dispute was what constituted a round trip? The Majority never considered for a moment the unrefutable fact that the Claimants were performing work consistent with "the Carriers' service" and therefore entitled to the travel allowance. Instead, it considered the extremely narrow interpretation of what it considers to be a "round trip" without ever considering the impact of its narrow view on the Claimants. There is no dispute that the Claimants were entitled to travel allowance because they were in "the Carriers' service". Hence, the manifest intent of Article XIV required the Carrier to apply the travel allowance provisions in the instant cases, rather than buying into the extremely narrow view of the Majority. The Majority here is attempting to place a new provision into Article XIV which is contrary to the manifest intent of the rule. That restriction would in effect render those traveling employes who move from gang to gang in the service of the Carrier as employes who are not entitled to travel allowance in accordance with Article XIV. Such a narrow interpretation of Article XIV is contrary to the clear intent of SBA No. 1114. Because of the reasons set forth above, this Award was wrongly decided and should not be followed.

Respectfully submitted,

Roy C. Robinson
Labor Member