

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 38846  
Docket No. MW-37316  
08-3-NRAB-00003-02337  
(02-3-337)

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Soo Line Railroad Company (former Chicago,  
( Milwaukee, St. Paul and 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 reimburse Claimant D. Mesick for the daily meal allowance he is entitled to for September 8, 9, 10 and 11, 2000 (System File C-52-00-110-04/8-00319-376 CMP).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Mesick shall now receive eighty-five dollars (\$85.00)."

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 Claimant seeks the contractual meal allowance for four days at \$21.25 per day. While most of the basic facts of this claim are not in dispute, certain key facts are. The Claimant was a Laborer on Production Crew No. 2 under the supervision of Roadmaster A. Kuntz. He worked a four-day workweek of ten-hour days beginning at 7:00 A.M. Monday through Thursday. Friday, Saturday and Sunday were his assigned rest days. He worked on Thursday, September 7 and then observed his three rest days as scheduled. On Monday, September 11, however, he was summoned for jury duty. He was released from jury duty at 10:35 A.M. that day. It was raining when he traveled to the court house and it was still raining when he was released from jury duty. He called the crew to find out if they were working. He was advised that the crew had reported for work and waited in their cars for three hours only to be released at 10:00 A.M. for a rain day and were compensated for three hours show up time. After he submitted his claim for the meal allowance for the pay period, Roadmaster Kuntz disallowed that portion of the claim for the four days in question.

The Organization and the Claimant contend that all Agreement requirements for payment of the meal allowance for the four days were met. Specifically, they maintain that the Claimant was not voluntarily absent from service where work was available to him on the jury duty day following his rest days. The Carrier, to the contrary, contends that the Claimant did not fulfill the necessary requirements following his release from jury service on September 11, 2000.

Rule 26(B)(4) reads, in relevant part, as follows:

"The foregoing per diem meal allowance shall be paid for each day of the calendar week, including rest days and holidays, except it shall not be payable for work days on which the employe is voluntarily absent from service, and it shall not be payable for rest days or holidays if the employe is voluntarily absent from service

where work was available to him on the work day preceding or the work day following said rest days or holiday.”

The foregoing language has been interpreted and applied in prior Awards cited by the Carrier. None of them, however, involve the same facts as here. The cited Awards deal with the effect of using a single day of vacation or personal leave days either just before or just the after rest days. What the prior Awards do reflect, however, is that the language has been strictly construed where the evidence of practice does not establish a less strict application. See for examples, Third Division Awards 37163, 37716, Award 7 of Public Law Board No. 4768, and Award 14 of Public Law Board No. 6302.

The parties' Agreement contains another Rule that governs the treatment of jury duty on scheduled work days. Rule 48 provides, in pertinent part, as follows:

“(5) Except as provided in paragraph (6), an employee will not be required to work on his assignment on days on which jury duty:

\* \* \*

- (b) is scheduled to begin during the hours of his assignment or within four hours of the beginning or ending of his assignment.
- (6) On any day that an employee is released from jury duty and four or more hours of his work assignment remain, he will immediately inform his supervisor and report for work if advised to do so.” (Emphasis added.)

Given the foregoing Agreement language, it is clear that the immediate supervisor contact requirement of Rule 48 (6) be must satisfied to avoid being characterized as voluntarily absent under Rule 26.

Although the Organization's Submission asserts that the Claimant did contact his supervisor as required, the record does not support the assertion. During the on-property handling, the Carrier pointed out that the supervisor

contact requirement had not been established. Indeed, in the final paragraph of its April 20, 2001 denial of the claim, the Carrier wrote:

“Clearly, as indicated in paragraph (6) of Rule 48, on any day when an employe is released from jury duty and four or more hours of his work assignment remain, he will immediately inform his supervisor and report for work if advised to do so. Once again, you provide no evidence of claimant contacting his supervisor.”

Careful examination of the record fails to reveal any such evidence. At most, the on-property record states that the Claimant “. . . phoned the crew. . . .” The record does not establish who he contacted on the crew, nor does it establish the time of such contact. Given the explicit language of Rule 48(6) merely phoning “. . . the crew . . .” is not sufficient. In this regard, it must also be recalled that the supervisor whom the Claimant should have immediately contacted was Roadmaster Kuntz. It was Roadmaster Kuntz who deleted the four days from the Claimant’s meal allowance claim.

In light of the foregoing considerations, we must find that the Claimant did not properly perfect his claim for the meal allowance in accordance with the explicit requirements of the Agreement. The Organization and the Claimant had the sole burden of proof to establish the indispensable facts necessary to perfect the claim. As a result of this shortcoming, the Claimant must be deemed to have been voluntarily absent from work on Monday, September 11, 2000. Thus, he has not established his entitlement to the payment sought.

#### AWARD

Claim denied.

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**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 30th day of January 2008.