

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 39277  
Docket No. MW-38294  
08-3-NRAB-00003-040189  
(04-3-189)

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(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 allow System Gang employe R. G. Fox the per diem allowance for the dates of March 1, 2, 3, 4, 5, 6 and 7, 2003 (System File C-0339-103/1362443).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. G. Fox shall now receive the per diem allowance for the aforesaid dates for a total per diem allowance of three hundred sixty-four dollars (\$364.00).”**

**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 was regularly assigned to on-line Gang 8581 working consecutive compressed halves pursuant to Rule 40(a). The Claimant observed assigned rest days of March 1 through 7, 2003. Per the Claimant's request, the Claimant then took March 8, 9 and 10, 2003 (ten hour days) as vacation days, returning to work on March 11, 2003. Although initially told that he would be compensated rest day per diem allowance for his rest days March 1 through 7, 2003, the Carrier subsequently determined that the Claimant would not be entitled to that compensation. This claim followed.

Rule 39 - PER DIEM ALLOWANCES reads, in relevant part, as follows:

“(e) On-line Service. Employees assigned with headquarters on-line as referenced in Rule 29, will be allowed a daily per diem allowance of \$48.00 (\$52.00 effective July 1, 2002 and \$57.00 effective July 1, 2005) to help defray expenses for lodging, meals and travel.

The foregoing per diem allowance will be paid for each day of the calendar week, including rest days, holidays and personal leave days, except it will not be payable for workdays on which the employee is voluntarily absent from service, or for rest days, holidays or personal leave days when the employee is voluntarily absent from service when work is available to him on the workday immediately preceding or the workday immediately following said rest days, holidays or personal leave days. No elimination of days for per diem allowances or vacation credits will occur when a gang is assigned a compressed work week, such as four (4) ten-hour days.”

Under Rule 39(e) the per diem allowance “. . . will not be payable . . . when the employee is voluntarily absent from service when work is available to him on the workday . . . immediately following said rest days. . . .” Under this Rule, because he took vacation days on March 8, 9 and 10, 2003 immediately following his rest days, the Claimant was not entitled to the per diem allowance sought by the Organization

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on his behalf. See e.g., Third Division Awards 37163 and 37105, as well as Public Law Board No. 6302, Award 14.

**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 21st day of July 2008.