

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39295
Docket No. MW-38204
08-3-NRAB-00003-040072
(04-3-72)

The Third Division consisted of the regular members and in addition Referee Susan R. Brown 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 Production Gang employee R. Nez the travel allowance in accordance with Rule 36 for the trip made from Stockton, California to his residence in Pinson, Arizona after the December 15, 2002 breakup of System Gang 8561 (Carrier’s File 1350322).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. R. Nez shall now receive payment of the travel allowance in the amount of two hundred dollars (\$200.00) ‘. . . including interest on that amount 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.

Claimant R. Nez, whose home is in Pinson, Arizona, worked as a System Laborer on Gang 8561, located in Stockton, California, in the fall of 2002. He was sent home on December 15 of that year along with 39 other workers whose jobs were abolished due to a force reduction. The next scheduled work day for Gang 8561 was January 9, 2003 and the 14 employees out of the original 54 who were still assigned to the gang were given travel allowances from their homes back to Stockton pursuant to Rule 36 (a).

The Claimant did not receive breakup pay for his trip home and filed a claim under Rule 36, Section 7 which reads, in pertinent part, as follows:

“(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 workweek. 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.”

The Carrier denied the claim, asserting that Gang 8561 did not break up in December, but was reduced in size and the Claimant was not entitled to travel pay for a reduction in force. It pointed out that because 14 gang employees received travel allowances under Rule 36 (a) in January, there can be no dispute that the gang did not break up in December. It also cited the definition of a production gang found in Article XVI: “a mobile mechanized gang consisting of ten (10) or more employees.”

According to the Organization, a gang breaks up when it can no longer function and/or perform the job for which it was originally bulletined, and a tie gang cannot install ties if there are only two employees remaining on the gang. The Organization points out that the Carrier failed to prove that the remaining gang employees were doing anything more than moving vehicles, cleaning up and preparing for the next season’s start-up.

As established by many prior Third Division Awards, it is the Organization’s burden to prove, not merely allege, its contentions, in this case that Gang 8561 was actually broken up and not just reduced in force in December 2002. The Organization, however, provided no evidence whatever of the work performed by the 14 employees that remained on the gang in January, despite its assertion that the employees were performing only clean-up and prep work. Moreover, those 14 employees are far more than the gang of two used as an example by the Organization of a gang that cannot perform its original function; the record establishes that the remaining employees held various job titles, not merely Laborer.

This case is distinguished from that addressed in Third Division Award 37053, cited by the Organization as precedent. In that case, a gang was bulletined with a four-day work schedule, but just two weeks after it began work, the gang was re-bulletined with a five-day schedule. Most employees who had bid the first bulletin bid off when the schedule changed and the Claimant in that case bid on. The Carrier denied that claimant start-up pay because the gang had already been in operation when the claimant joined. The Board, however, concluded that “in the particular

facts and circumstances presented on this record, we are persuaded that the Claimant was entitled by the language and the manifest intent of [the Rule 36] provision to receive \$225.00 travel allowance.” Here, conversely, we do not find a constructive break-up of a gang with 14 remaining members and, therefore, no manifest intent to pay the Claimant break-up pay when the Agreement does not provide for travel pay for employees who are the subject of a reduction in force.

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 September 2008.