CORRECTED

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39532
Docket No. MW-37490
09-3-NRAB-00003-020571
(02-3-571)

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company (former Missouri
(Pacific 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 allow the proper travel allowance to Mr. R. Lovett for his round trip made on May 23 and June 1, 2001 as provided for in Rule 37 (System File Y01-060/1283958 MPR).

(2) As a consequence of the violation referred to in Part (1) above, Mr. R. Lovett shall now be allowed the proper travel allowance of one hundred seventy-five dollars ($175.00)."

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.

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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 claim involves a dispute over the interpretation of the "Travel Allowance" provision (Rule 37(a)). That provision reads, in pertinent part, as follows:

> "(1) At the beginning of the work season employees are required to travel from their home 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 residence. During the work season the Carrier's service may place them hundreds of miles away from home at the end of each workweek. Accordingly, the Carrier 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:
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> |---|---|---|---|
> | 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.
>
> (2) 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.

(3) The Carrier may provide bus transportation for employees to their home area on weekends. Employees need not elect this option.

(4) For employees required to work over 400 miles from their residence, the Carrier will provide, and these employees will have the option of electing, an air travel transportation package to enable these employees to return to their families once every three weeks. Ground transportation from the work site to the away-from-home airport will be provided by the Carrier, and on the return trip the Carrier will provide ground transportation from the away-from-home airport to the lodging site. In dealing with programmed work, the employees and carrier may know how long the employees will be required to work beyond the 400 mile range and the Carrier can require the employee to give advanced notice of their intention to elect the air transportation option so that the Carrier may take advantage of discounted air fares. Employees must make themselves available for work on at least ninety (90) percent of the regularly scheduled workdays during the three (3) week period, and they will not qualify for the travel allowance set forth in section (a) during the three (3) week period."

In May 2001, Claimant R. Lovett bid and was assigned to a vacancy on System Rail Gang 9282 working near Sugarland, Texas. He had previously been working on System Rail Gang 9239 near Kansas City, Kansas. That gang worked a compressed half workweek. His last day of work for the pay period was May 23, 2001. His rest days were scheduled from May 24 to May 31. He took those rest days at his residence at Hempstead, Texas. On June 1 the Claimant reported for his new position at Sugarland, Texas (near Houston) driving from his residence in Hempstead. He subsequently requested to be paid the weekend travel allowance pursuant to Rule 37(a)(1). His request was denied on the grounds that he did not qualify for the allowance.

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By letter of July 22, 2001, the Organization submitted a claim on behalf of the Claimant for payment of the travel allowance. In that letter the Organization contended that the Claimant's trip from Kansas City to Hampstead and then from Hampstead to Sugarland, Texas, constituted a round trip under the intent of Rule 37. The Carrier denied the claim on September 14. In that denial, the Carrier noted that the Claimant had been paid a travel allowance for the second period of May, and was not, therefore, entitled to another travel allowance when he drove to Texas, to join his new System Rail Gang. The claim was progressed up to and including the highest Carrier officer empowered to handle such matter, after which it remained in dispute. Accordingly, it is properly before the Board for adjudication.

The Organization claims that it is clear under Rule 37 that, because the Claimant traveled from his Kansas City work location to his home and then to his new work location in Houston, Texas, he completed a "round trip" (i.e., work site to home to work site) and, is therefore, entitled to the travel allowance contemplated therein. It protests that employees regularly travel from one work location to their home and return to another work location and are routinely paid for the actual miles of the round trip from their previous work location to their residence and from their residence to their new work location. The Organization contests the Carrier's interpretation that Rule 37 applies only to those employees returning to the same work location. It insists that the fact that the Claimant returned not only to a new work location, but also to a different System Rail Gang, does not relieve the Carrier of its obligations under Rule 37.

The Carrier disputes the Organization's interpretation of Rule 37. It contends that the language is clear, and does not provide for payment for an employee's trip home from one Gang, and then a trip from home to the new Gang onto which he has bid. The Carrier insists that the Claimant's trip did not meet the criterion of "round trip" as stated in Rule 37. It contends that Rule 37 provides for round trip transportation to be paid back and forth over the same route – i.e., home/job site/home. The Carrier also points out that Rule 17 specifies that "Employees accepting a position, in the exercise of seniority rights, will do so

without causing extra expense to the railroad." It points out that the Claimant's bid onto the System Gang in Houston constituted just such an exercise of seniority rights; thus, he is not entitled to the "round trip" reimbursement provided under Rule 37.

The Board carefully reviewed the record, in particular the applicable contract language, in this case. We find that the language of Rule 37 is clear on its face. We do not find any support for the Organization's claim that the Claimant's trip from Kansas City to Hempstead, Texas, to Houston constituted a "round trip" under the meaning of either the Agreement or the dictionary. We are entirely in accord with the findings of the Board in Third Division Award 37987, which held, in pertinent part, as follows:

> "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."

We note that Article XIV, Section 1 is essentially identical to Rule 37 in the instant case. In light of the foregoing the claim is denied in its entirety.

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 2nd day of February 2009.

LABOR MEMBER'S DISSENT
TO
AWARD 39532, DOCKET MW-37490
(Referee Wesman)

This case involved the interpretation of Article XIV of the 1996 National Agreement. When Article XIV was first instituted the Carrier alleged that it 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 away 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.
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> * * *
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> 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.
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> **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. ***" (Emphasis in original)

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 this case, the Claimant was assigned to a gang that required him to travel away from home during the work week to perform service for the Carrier and the Carrier was obligated to compensate him for such travel. The Claimant received the travel allowance he was entitled to receive until such time as he bid to another gang that also required him to travel away from home during the work week to perform service for the Carrier. It was at that point when the Claimant moved from one gang to another that the Carrier refused to pay him travel allowance for the interim period when he moved between gangs.

The Carrier took the position that the Claimant was exercising his seniority when he moved from one gang to another and, therefore, it was not obligated to pay him 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 Claimant was performing work consistent with the Carrier's service and was 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 Claimant. There is no dispute that the Claimant was entitled to travel allowance because he was in the Carrier's service and received travel allowance prior to this instance. Hence, the manifest intent of Article XIV required the Carrier to apply the travel allowance provisions in the instant case rather than buying in to 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 the SBA No. 1114.

During the panel discussion of this case, the Referee was presented with two conflicting lines of authority. One was Award 37987 cited in its findings and Award 38009 without citation. Award 38009 held:

> "The language of the Article, supra, is clear on its face as to a travel allowance. It refers to employees 'at the beginning of the work season' who are 'required to travel from their homes to the initial reporting location and at the end of the season . . . return home.' The language that follows acknowledges that the work may place them far from home and sets a table of payments, '[d]uring the work season' for employees 'by the most direct highway route for each round trip' home.

"There is no dispute between the parties on the core meaning of the language. Travel is paid if an employee is making one way trips at the beginning and end of the work season to a system regional gang and also if they are making round trip travel home to and from their assigned gang. What is in dispute at bar is that the employee was assigned to a System Regional Gang and traveled home. After being home, the employee returned to a different System Regional Gang. Had they not changed gangs through the exercise of seniority, there would be no dispute. The Carrier argues that the employee went to a new assignment on a one way trip not covered by Article XIV. The Organization states that this was a round trip back to a System Regional Gang, having nothing to do with the exercise of seniority.

The Board thoroughly analyzed all on-property materials, arguments and Awards. In line with the meaning of Article XIV, what is persuasive to the Board is that the intent of this Article is clear. After a complete evaluation, Arbitration Board No. 1114 concluded, '. . . that the travel allowance benefits of Article XIV of the September 26, 1996 National Agreement apply to all traveling employees. . . .' It was the intent of the parties to provide a travel allowance benefit to employees who through their work with System Regional Gangs found themselves during the work season far away from home. The travel allowance was intended for all employees who travel between their homes and various changing work locations at the start and end of workweeks. Those changed locations could develop for reasons of Carrier changes or seniority as negotiated language does not specify.

Accordingly, although there is support in prior payments, the language itself has no limiting condition as to seniority or other condition. Those who negotiated this language could easily have utilized such terminology on seniority changes, giving benefits only under express limited conditions. They did not do so. These are traveling employees and continue to be traveling employees after the exercise of their seniority to another System Regional Gang.

The Board carefully studied numerous Awards finding them not on point (Third Division Award 36718); involved with other pertinent issues;

"a lack of facts; other Rules; another Carrier (Third Division Award 36810 with Organization Dissent and Carrier Response); and with additional Letters of Agreement (Third Division Award 37477). In this dispute the Organization fully presented the factual base to support its position, including prior settlement claims on point with the instant case. The Board is persuaded that the language of Article XIV and the facts at bar support a sustaining Award to Parts (1) through (5). For Parts (6) through (10), the Board sustains the requested allowance, but denies payment of any interest.

AWARD

Claim sustained in accordance with the Findings." (Emphasis in original)

A review of the above-cited award clearly held that traveling to a different gang between the end of one week and the beginning of another did not change the Claimant's status of a traveling employe and sustained the claim. Instead, the Majority in this case adopted the narrow view as outlined in Award 37987 and denied the claim. There was no analysis of the two (2) conflicting lines of authority, which should have occurred. Because of the reasons set forth above, this award was wrongly decided and should not be followed.

Respectfully submitted,

Roy C. Robinson

Labor Member