

**Form 1**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 40102  
Docket No. MW-40443  
08-3-NRAB-00003-080272**

**The Third Division consisted of the regular members and in addition Referee Sherwood Malamud when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company (former Missouri  
( Pacific Railroad Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier recovered and refused to allow per diem allowance payment that had been made to Mr. K. Nunn while assigned to on-line Gang #3807 from December 22 through December 31, 2006 (System File MW-07-39/1469139 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. Nunn shall now receive payment of the per diem allowance for the aforesaid dates for a total of five hundred seventy dollars (\$570.00).”**

**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.

Claimant K. Kuhn exercised his seniority on December 21, 2006 and displaced C. Etheridge (the Claimant in Third Division Award 40101) as a Truck Driver on an on-line gang. The Claimant worked only one day of the compressed half before the Carrier belatedly discovered that the Claimant did not meet the qualifications for the position of Truck Driver because he did not possess a Class B CDL license as required. The Claimant did not return to this Truck Driver position on Gang 3807. Pursuant to Rule 36, the payment of the per diem ceases when the employee no longer works on an on-line gang. The Claimant was not entitled to the per diem paid to him and later recouped by the Carrier. Accordingly, the instant claim is denied.

**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 19th day of November 2009.