

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40231
Docket No. MW-40529
09-3-NRAB-00003-080385**

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**

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 Consolidated System Gang Production Gang 8539 employee R. Nez the Rule 36 travel allowance totaling three hundred thirty-seven dollars and fifty cents (\$337.50) for the trip he made from his work location at Portland, Oregon to his residence at Pinon, Arizona following the abolishment of his position and the resulting break up of Gang 8539 on September 21, 2006 (Carrier’s File 1465722).**
- (2) As a consequence of the violation referred to in Part (1) above, and ‘In recognition of the provisions of Rule 36 (Article XIV, Section 1, of the Mediation Agreement of September 26, 1996), there appears to be no valid basis for denying Mr. Nez’s claim for the allowances listed above. We are, therefore, requesting immediate payment of same 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.

The facts underlying this dispute are not in dispute. Claimant R. Nez was regularly assigned to Consolidated System Production Gang 8359 during the 2006 work season. He holds seniority in various classes in the Track Subdepartment. Gang 8359 worked in various locations throughout the Carrier's territory during the 2006 work season.

On September 21, 2006, the Carrier abolished the Claimant's position, and at least four other positions, on Gang 8359. On September 21, 2006, the gang was working in the vicinity of Portland, Oregon. After his release from Gang 8359, the Claimant traveled 1,350 miles to his home to Pinon, Arizona. The Claimant requests pay under Rule 36, Sections 7 (a) and (b).

The Carrier acknowledges that the Claimant's position was abolished. It argues that the gang was not abolished. The Organization failed to demonstrate on the property that Gang 8359 no longer performed the work it formerly performed before the gang was reduced in size.

The Carrier's argument is based on Third Division Award 39295. Therein the Board reasoned that travel allowance is payable only upon the break-up of a gang. The gang continued to operate as evidenced by the payment of the travel allowance to 14 employees in January 2003. The gang was reduced in size. It was not abolished. The Claimant's position was abolished in December 2002, when the gang continued to operate. Here, the gang continued to operate. The Carrier argues that the Board should follow its decision in Award 39295. In that Award, the Board distinguished its decision from its decision in Third Division Award 37503. In that Award the Carrier bulletined the gang to operate on a four-day work schedule. After only two weeks, the Carrier re-bulletined the gang to a five day work schedule. The Board treated the re-bulletin as an abolition of the gang, particularly because many of the employees of the

gang bid off of it and its five-day work schedule. The Board sustained the travel allowance claim under the unique facts of that case.

In the instant case, the Organization argues that Gang 8539 was abolished when the Carrier reduced its numbers by 50 percent. The Board rejected this argument in Award 39295. After distinguishing Third Division Award 37503, the Board in 39295 held:

“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.”

The parties are the same, the issue is the same, even the Claimant is the same. Award 39295 stands as precedent to the determination of this case. This matter has been decided. Accordingly, the 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 21st day of December 2009.