

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40285
Docket No. MW-40644
10-3-NRAB-00003-080472**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 failed and refused to allow ‘on-line’ employe M. Crossley the travel allowance for his round trip made from his work location on March 30, 2007 at San Marcos, Texas to his residence at Fort Worth, Texas and returning to his work location at Bryan, Texas on April 1, 2007 (System File MW-07-75/1475487 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Crossley shall now receive the travel allowance for the aforesaid round trip.”**

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.

During the last week of March 2007, the Claimant was assigned and worked as a Trackman on Production Gang 9181 in the vicinity of San Marcos, Texas. Gang 9181 worked a T-2 compressed work half schedule. The Claimant was a successful bidder to a position on Production Gang 9103 which was working in the vicinity of Bryan, Texas. Gang 9103 worked a T-1 compressed work half schedule. The Claimant was held on Gang 9181 and was released on Friday, March 30, 2007, which was the last regularly scheduled work day of Gang 9181's T-2 compressed work half schedule. Gang 9103's first work day for April's T-1 compressed work half schedule was Sunday, April 1, 2007.

After his release from Gang 9181 on March 30, 2007, the Claimant drove from San Marcos, Texas, to his home in Fort Worth, Texas. The Claimant then drove to Bryan, Texas, to report to Gang 9103 on April 1, 2007. The Organization seeks travel allowance for the Claimant for the trip, which the Carrier denied.

From an equitable standpoint, the Organization's position has appeal. The Claimant's trip from San Marcos to his home in Fort Worth after he was released from Gang 9181 and then his trip to Bryan to join Gang 9103 to timely report for that position appears shorter in distance than would a trip from San Marcos to Fort Worth and back to San Marcos. Thus, that shorter trip prevents the Carrier from relying on Rule 17 ("Employees accepting a position, in the exercise of their seniority rights, will do so without causing extra expense to the railroad."). The Board will therefore not consider Rule 17 as being dispositive of this dispute.

However, the problem for the Organization's position is that these cases are not decided on the basis of equity - they are decided on the basis of contract language. Rule 37(a)(1) states that ". . . 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." (Emphasis added) And it has been held that travel like the Claimant's trip from San Marcos to Fort Worth to Bryan to

leave his former gang and join his new gang at the end of one cycle and the beginning of another cycle is not a “round trip.” See Third Division Award 37987:

“The Board finds the language of Article XIV, Section 1 to be clear and unambiguous. Section 1 provides for an allowance to be paid each employee for ‘all miles actually traveled by the most direct highway route for each round trip.’ (Emphasis added.) The common meaning of “round trip” is travel from and back to the same point (A to B and back to A). The Organization argues that because mobile gangs may change location so that a member reports to a new point after a weekend (A to B to C) and the travel allowance is payable then, the allowance should be payable to the Claimant in the instant case. The Board finds this argument to be without merit. It is clear from Section 1’s language that ‘round trip’ is defined in the context of the mobile gangs to which the provision applies as travel from and to the gang, wherever the gang may be at the time of travel. . . . Section 1 does not contemplate travel from and return to a single geographic location but rather travel from and travel to a single gang. That is the plain meaning of ‘round trip’ as used by Section 1.

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. . . .”

See also, Third Division Award 37994.

The parties have had similar disputes with the same result. See Public Law Board No. 7156, Award 7 (where an employee bid off one gang to another and claimed travel allowance):

“With respect to the travel allowance portion of the claim, we find the Organization cannot carry its burden. Rule 37(a)(1) provides for travel expense ‘. . . for each round trip.’ Claimant did not make

a 'round trip' on the dates for which travel allowance is claimed. Instead of going from Gore to his home in Moline, Kansas and return (as he would have for Gang 8896), Claimant drove from Gore, Oklahoma to Moline, Kansas and then to Chamois, Missouri. That was not a 'round trip' as required by the rule. . . ."

And, "round trip" is commonly defined consistent with those results. See The Random House Dictionary of the English Language (2nd ed.) (defining "round trip" as "a trip to a given place and back again").

If the skillful negotiators who constructed the language involved desired the travel allowance to apply to circumstances where employees exercised their seniority to move to different gangs, they easily could have provided for that occurrence. They did not do so. Instead, they limited the travel allowance to those making a "round trip," which the Claimant did not do. Notwithstanding the equities of the Organization's position, the Board therefore has no choice. Clear language governs the result.

This claim shall therefore be 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 1st day of March 2010.