

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41805
Docket No. MW-41467
14-3-NRAB-00003-110026**

The Third Division consisted of the regular members and in addition Referee Brian Clauss 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 System Gang employee R. Anaya the per diem allowance for July 1, 2, 3, 4, 5, 6, and 7, 2009 (System File J-0939U-252/1524141).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Anaya shall now ‘. . . be compensated for seven (7) days of non-taxable per diem allowance for a total of \$399.00***’”**

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.

The record evidence establishes that the Claimant worked a compressed-half schedule on Gang 8568 during the period of June 23 through June 30, 2009 in accordance with Rule 40. A seven-day rest period from July 1 through July 7 followed. On July 6, the Claimant was informed that he would be serving an 80-hour disciplinary suspension during the period of July 8 through July 14, 2009. The Claimant served the suspension and returned to work on July 15, 2009. The Claimant was not paid per diem for the seven rest days.

Rule 39 – PER DIEM ALLOWANCES provides, in pertinent part:

“(e) On-line Service* - Employees assigned with headquarters on-line, as referenced in Rule 29, will be allowed a daily per diem allowance of \$48.00 (\$52.00 effective July 1, 2002 and \$57.00 effective July 1, 2005) to help defray expenses for lodging, meals and travel.

The foregoing per diem allowance will be paid for each day of the calendar week, including rest days, holidays, and personal leave days, except it will not be payable for workdays on which the employee is voluntarily absent from service, or for rest days, holidays or personal leave days when the employee is voluntarily absent from service when work is available to him on the workday immediately preceding or the workday immediately following said rest days, holidays or personal leave days. No elimination of days for per diem allowances or vacation credits will occur when a gang is assigned a compressed work week, such as four (4) ten-hour days.”

The Organization claims that the Claimant was not “voluntarily” absent from the workplace on the first work day following the rest period. To the contrary, his absence was “involuntary” because the Carrier placed the Claimant on suspension during a timeframe that the Carrier determined. Further, the Rule does not mention that suspensions constitute “voluntary” absences. In support of its position, the Organization called the Board’s attention to suspension and holiday Awards cited in its Submission.

The Carrier counters that the analysis is clear. The Claimant was unavailable for work as a result of a disciplinary suspension. From the Carrier's viewpoint, a suspension operates similar to a vacation. In other words, if an employee does not perform service on the last work day and the first work day surrounding a rest period, the employee is not entitled to per diem.

The Carrier points out that Appendix "X-1" also provides:

"The language of Rule 39(e) 'indicating the employee is voluntarily absent' means the employee has failed to render compensated service on a workday on which work was available to him."

The Board carefully considered the evidence contained in the parties' Submissions. The Organization's citation to holiday pay cases is not persuasive. In the instant case, the Claimant was not available for work on July 8, 2009 – the first workday immediately following his rest period. Consequently, for qualification purposes, he failed to render compensated service on a workday on which work was available to him as required by the applicable Rule. In view of the foregoing, the claim must 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 27th day of February 2014.