

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43062
Docket No. MW-43835
18-3-NRAB-00003-160633**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(National Railroad Passenger Corporation (Amtrak) -
(Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it, without notice to the General Chairman, established District Unit work and failed to provide employees C. Martinez, D. Marsh, N. Russler, A. Bednarski, J. McKinney, K. Richardson, S. Mickles, J. Knapp, S. Herrington, J. Delamater, K. Conley, T. Pearson, J. Brooks, M. Moore, A. Clark, K. Bouwkamp, T. Renbarger, M. Holder, E. Gutierrez and A. Konieckzi daily per diem, weekend travel allowance and Incentive Allowance as required by Rule 29 beginning on March 2, 2015 and continuing (Carrier’s File BMW-587 NRP).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants, listed above, must be allowed per diem allowances for all days where they performed compensated service, allowed weekend travel allowances for each weekend trip endured and provided an Incentive Allowance for each hour worked beginning on March 2, 2015 and continuing until the violation ceases.”**

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 Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated the Agreement when it failed to compensate the Claimants with per diem pay, travel allowance and an incentive allowance, in addition to regular earnings, when they were assigned to perform District Unit work beginning on March 2, 2015. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier violated the Agreement by failing to notify the General Chairman of its intent to establish District Unit work, because the Carrier violated the Agreement when it failed and refused to pay the Claimants the per diem, travel allowance and incentive allowance while they were required to perform District Unit work, and because there is no merit to the Carrier's defenses. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof, because the District Unit rule does not apply in that the Claimants were assigned to a fixed headquarters location, because the Board may not amend or rewrite the parties' Agreement, and because there was no requirement of advance notice to the Organization.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement by failing to provide a number of the Claimants their daily per diem and weekend travel allowance pursuant to Rule 29. Therefore, this claim must be denied.

The record is clear that this claim does not involve a District Unit as is defined in Rule 29. The Claimants had a fixed headquarter and worked in the Michigan Seniority District, and there were no District Units established by the Carrier. Consequently, Rule 29 has no application to the claim.

It is fundamental that the Organization bears the burden of proof in cases of this kind. In this case, the Organization has failed to meet that burden, primarily because the Organization failed to establish that the claim is comprised of part of a Rule 29 gang. Therefore, this 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 2nd day of May 2018.