

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43541  
Docket No. MW-43023  
19-3-NRAB-00003-150222**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens 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 Carrier violated the Agreement when it abolished the positions of Gang 9879 Machine Operator T. Hendricks and Trackman R. Hamby without providing them four (4) working days advance notice of such abolishment as required by Rule 10 and when the Carrier failed and refused to pay them three (3) days per diem allowance in connection therewith (System File UP931PA14/ 1599244 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants T. Hendricks and R. Hamby shall each receive three (3) days per diem allowance.”**

**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 Claimants established and hold seniority in the Carrier's Maintenance of Way and Structures Department. They were regularly assigned to Gang 9879 and were working under a T-1 consecutive compressed half work period. On December 30, 2013, Supervisor Mike Kirkwood called the Claimants and told them that their positions were being abolished and they need not report to work on January 2, 2014.**

**Rule 10, Force Reduction, provides in part:**

**“(b) Not less than five (5) working days’ advance notice will be given before regularly established positions are abolished, except for positions on a gang working ten (10) hours or more a day on a compressed work period will require not less than four (4) working days’ notice of abolishment.”**

**Despite this notice, the Claimants reported to work on January 2, the first work day of the T-1 schedule for January 2014. The Claimants were told there was no work for them and to return home. The Carrier compensated the Claimants for four days of work (January 2, 3, 4 and 5, 2013) and one per diem for having traveled to work on January 2.**

**The Organization filed this claim on February 4, 2014, seeking per diem for the Claimants for January 3, 4, and 5, 2014. The Carrier denied the claim on March 7, 2014. The parties processed the claim on-property, but were unable to resolve it, so it is properly before this Board for adjudication.**

**The Organization contends that because the Carrier failed to give the Claimants four working days’ notification before abolishing their positions, the Claimants are entitled to receive per diem for those days. The Organization contends that the 2012 Local/National Agreement governs per diem and provides that employees are entitled to per diem when they are scheduled but do not work at the direction of management. The Organization contends that the Claimants were scheduled to work January 2, 3, 4, and 5, but did not work at the direction of management. The Organization contends that the Carrier paid the Claimants one day’s per diem, undercutting its argument that**

no per diem was due for the days after which the positions had been abolished. The Organization contends that it is undisputed that the Claimants live in excess of 50 miles from the worksite.

The Carrier contends that it did not violate the Agreement, because the parties intended for per diem to be restricted to situations in which the employees have incurred some sort of expense for lodging, meals, and travel. In this case, the Carrier contends, the Claimants were not entitled to per diem pay when their work location was not farther than 50 miles from their homes. The Carrier contends that the per diem is intended to defray expenses associated with lodging and meals, not to provide additional income to employees. The Carrier contends that one day per diem was paid to the Claimants because they did not understand their supervisor's instructions and traveled to work that day but denies that they were entitled to a per diem on days when they did not report to a work site.

Both parties cite to the Local/National Agreement between the Carrier and the Organization dated April 25, 2012, which provides, in part:

- “2. Per diem allowances provided to employees headquartered on-line or in other mobile service will only be paid on days when compensated service is performed and days scheduled but not worked at the direction of management (e.g., Hours of Service required rest for CDL drivers, inclement weather).
3. No per diem allowance will be paid to an employee headquartered on-line or in other mobile service who is working (work site reporting) within fifty (50) miles of their residence.”

The burden is on the Organization to show a violation of the Agreement. The Carrier abolished the Claimants' positions without giving them four business days' advance notice and thus, paid their wages for the intervening days. With the exception of January 2, they reported to a work site within 50 miles of their residence, because they were not required to leave home.

In a decision on this property, this Board has already found that the “purpose of per diem is to defray expenses for lodging and meals for an online gang.” Third Division Award 40870. The Claimants had no expenses for lodging and meals during the time that they were at home and reporting to a work site within 50 miles of their

residence. The Carrier did not direct or expect them to report to any work site on the dates at issue. Thus, on January 3, 4, and 5, 2013, they did not satisfy the conditions necessary to be paid per diem allowance pursuant to the Agreement.

**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 March 2019.**