

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45079  
Docket No. MW-47035  
24-3-NRAB-00003-220083**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division –  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**  
**(Keolis Commuter Services**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

**(1) The Agreement was violated when the Carrier assigned Mr. T. McPherson as a trackman to a Rule 29 District Unit (Tie Installation Unit V-404) and refused to properly compensate him with a per diem allowance for each working day beginning on October 2, 2020 and continuing (System File S-2029K-293/BMWE 10/2021 KLS).**

**2) As a consequence of the violation referred to in Part (1) above, Claimant T. McPherson shall now ‘\*\*\* be compensated all Per Diem payments for each day assigned to the District Unit. This Claim is also ongoing and inclusive of all lost Per Diem for the Claimants (sic) until the violation ceases. \*\*\*’ (Emphasis in original).”**

**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.

**Factual Background:**

Claimant believes the Agreement was violated when the Carrier assigned him as a trackman to a Rule 29 District Unit (Tie Installation Unit V-404) and refused to provide him with a *per diem* allowance for each working day beginning on October 2, 2020 and continuing. The resulting claim was fully processed to consideration by this Board.

The parties' Agreement sets forth the following mutual intent regarding *per diem* payments, quoted in pertinent part:

**RULE 29 - DISTRICT UNITS**

- I. DISTRICT UNITS MBCR may establish one or more of the following District Units not assigned fixed headquarters to work over the Seniority District.

1. Tie Installation Unit
2. Surfacing Unit
3. Mechanical Brush Gang
4. Rail Laying Gang
5. Undercutting Gang
6. Welding/Joint Elimination
7. Switch and Rail Renewal
8. Bridge and Building Construction Unit \* \* \*

**VI. TRAVEL ALLOWANCE \* \* \***

4. Each employee assigned to a position in a District Unit established under this Agreement will receive, in addition to regular earnings, a per diem allowance of \$29.50 per day for each working day in which he performs compensated service. This allowance is in lieu of any other allowance or provisions by rule, custom or practice relating to travel time, transportation, meals or lodging, however established.

As of September 16, 2019, the parties ratified the Agreement with updated *per diem* rates which are as follows: “4. Rule 29 - DISTRICT UNITS: Amend the Per Diem Payment to increase as follows: Eff. 7/1/19: \$34.50 per day 7/1/20: \$42.00 per day 7/1/21 \$48.00 per day”

**Position of Organization:**

The Organization maintains the Carrier violated the Agreement when it failed to provide Claimant with a *per diem* while he was working as a trackman assigned to a District Unit (Tie Installation Unit V-404). In its view, the Carrier is required to compensate Claimant under Rule 29. The language of the Agreement plainly states that each employee assigned to a position in a District Unit will receive a *per diem* allowance at the rate of forty-two (\$42.00) for each work day assigned to work at the capacity of a District Unit, updated as of July 1, 2020.

The Carrier has contended that Claimant did not own a job in the Track Department. The Carrier further asserted that the thirty-eight positions under the V-404 Tie Installation Unit were full, and as a result, it was required to place Claimant as an additional employee alongside the tie installation crew, but excluding him from the *per diem* payments made to the thirty-eight employees assigned to the unit. The Organization views this as an admission that Claimant was placed with the tie installation crew.

**Position of Carrier:**

The Carrier notes that Claimant is an employee in the track department who was assigned as an extra employee to work with the regular Tie Installation Unit employees. The Tie Installation Unit is a group of thirty-eight employees who bid, in accordance with seniority, to perform special District Unit work. The number of employees in that unit is fixed, and only when one member leaves does a spot become available in the unit. These are competitive jobs awarded to employees with substantial seniority. Claimant did not bid and was not awarded Tie Installation Unit work. He was instead assigned to work alongside the Tie Installation Unit.

Employees who are part of the Tie Installation Unit are entitled to a *per diem* pay increment in addition to their regular pay. The Organization is inappropriately seeking to expand the *per diem*, which is paid only to employees who have bid into the

**Tie Installation Unit. As is well settled, arbitration is not the place to seek such an expansion of rights.**

**Analysis:**

**Under Section VI (4), “each employee assigned to a position in a District Unit” is entitled to the compensation. The District Units are specifically defined, and Tie Installation Unit is named as a District Unit. Claimant was assigned to work with that unit as an extra, but did not bid on a position within the unit based on his seniority, and did not join the Tie Installation Unit as one of its thirty-eight employees.**

**On December 28, 2020, Chief Engineering Officer L. Gros advised the Organization that Claimant “did not own a job he was as an extra employee. The 38 positions under the Tie Installation Unit were full.” This establishes that Claimant was not assigned a position in the Tie Installation Unit. He was never added to that unit. Although he worked alongside, apparently performing comparable duties, he failed to meet the contractually established criterion for receipt of the *per diem* compensation allotted to members of the Tie Installation Unit.**

**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 31<sup>st</sup> day of October 2023.**