

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 7

Carrier File No. 3MWB 88-11-25E
Organization File No. T-D-405

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier failed and refused to allow Machine Operator W. G. Poppe per diem meal and lodging allowance for Friday, July 22, 1988 (System File T-D-405/3MWB 88-11-25E).

2. Claimant W. G. Poppe shall be allowed twenty-three dollars and eighty cents (\$23.80) pay as a consequence of the aforesaid violation.

F I N D I N G S

The Carrier correctly identifies the issue in question here as follows:

Does a personal leave day qualify as a day on which an employee is entitled to compensation for lodging and per diem expenses as set forth in Rule 38?

The particular facts in reference to the Claimant herein are as follows. He was assigned to a surfacing crew, living

away from home where the Carrier did not furnish lodging or meals, and is thus entitled to a lodging and meal allowance as provided in Rule 38. The Claimant was assigned to work Monday through Friday, with Saturday and Sunday designated as rest days.

The Claimant worked on Thursday, July 21, 1988. After receiving permission, the Claimant observed a personal leave day on Friday, July 22, 1988, under Rule 77. The Claimant thereafter worked his regular assignment on July 25, 1988. For July 22, the Carrier paid the Claimant his regular rate of pay, without the lodging and meal allowance.

The cited Rules read in pertinent part as follows:

RULE 38. MOBILE HEADQUARTERS (WITH OR WITHOUT
OUTFIT CARS - LODGING - MEALS)

A. Other than as provided in Rules 37 and 39, the Company shall provide for employees who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in outfit cars, camps, highway trailers, hotels or motels as follows: . . .

G. The foregoing per diem meal and lodging (if applicable) allowance shall be paid for each day of the calendar week, including rest days and holidays, except that it shall not be payable for work days on which the employee is voluntarily absent from service, and it shall not be payable for rest days or holidays if the employee is voluntarily absent from service when work was available to him on the work day preceding or the work day following said rest days or holiday.

RULE 77. PERSONAL LEAVE DAYS

A. A maximum of two days of personal leave will be provided on the following basis:

Employees who have met the qualifying vacation requirements during eight calendar years under vacation rules in effect on January 1, 1982 shall be entitled to one day of personal leave in subsequent calendar years;

Employees who have met the qualifying vacation requirements during seventeen calendar years under vacation rules in effect on January 1, 1982 shall be entitled to two days of personal leave in subsequent calendar years. . . .

(2) Personal leave days will be paid for at the regular rate of the employee's position or the protected rate, whichever is higher. . . .

The Organization argues that the Claimant is entitled to the lodging and meal allowance as part of his compensation for the personal leave day. The Organization contends that a personal leave day should be treated the same as a holiday, for which Rule 28-G provides payment of the allowance. The Carrier contends that the personal leave day is one on which the employee is "voluntarily absent", and thus the allowance is not payable. Rule 38 does not mention vacations, but it is established that the allowance is not provided for the vacation period (although it may be payable on the rest days prior to the commencement of a vacation).

The Organization notes Third Division Award No. 27020 (Meyers) and Second Division Award No. 10033 (Peck), in which a personal leave day is identified as a work day for purposes of holiday pay eligibility.

It is the Board's conclusion that a personal leave day is more akin to vacation than to a holiday. Lodging and meal allowance is not paid while an employee is on vacation. The personal leave day is selected by the employee and not imposed on him by the calendar, like a holiday. It is a day on which the employee is "voluntarily absent", as is true in most instances for vacations.

This is not contradictory to the findings in the two Awards cited above. In essence, those Awards found that a personal leave day, taken with permission and under pay, does not operate to deprive the employee of an adjacent holiday. Further, Rule 77-B (3) calls for payment of the regular rate; this cannot be read necessarily to include total compensation. Finally, Rule 38-G specifies the inclusion of "rest days and holidays" for the allowance. This cannot be read to extend to personal leave days or vacation, both of which are days for which wages are paid.

Both the Organization and the Carrier state that personal leave days have been paid in the past in the manner each

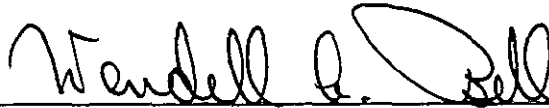
suggests, but no convincing verification of this is offered.
In view of this, the reading of these Rules as analyzed above
must prevail.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Chairman and Neutral Member



WENDELL A. BELL, Carrier Member



MARK J. SCHAPPAUGH, Employee Member

NEW YORK, NY

DATED: 8/17/90