

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)

) Case No. 20

)

) Award No. 20

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

D. A. Ring, Carrier Member

Hearing Date: May 12, 2000

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier failed and refused to pay System Gang employee D. J. Ahl travel allowance for the trips made on July 11, 13, 18, 20, 25, 27, August 1 and 3, 1997 as provided in Article XIV, Section 1 of the September 26, 1996 Mediation Agreement (System File N-548/1095952).
2. As a consequence of the violation referred to in Part (1) above, Mr. D. J. Ahl shall be allowed a travel allowance of two thousand fifty dollars (\$2050.00).

FINDINGS:

Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The instant claim concerns unpaid travel allowances and Article XIV, Section 1 of the September 26, 1996, Mediation Agreement. That provision states:

- (a) At the beginning of the work season employees are required to travel from their homes to the initial reporting location, and at the end of the season they will return home. This location could be hundreds of miles from their residences. During the work season the carriers' service may place them hundreds of miles away from home at the end of each work week. Accordingly, the carriers will pay each employee a minimum travel allowance as follows for all miles actually traveled by the most direct highway route for

each round trip:

.....

The record reflects that Claimant moved his residence from Fremont, Nebraska to Eufaula, Oklahoma, which was outside his seniority territory. Carrier maintains that under such circumstances, Claimant is not entitled to a travel allowance. The Organization maintains that the Agreement contains no exceptions for employees who live off their seniority territory or who move a particular distance away. The parties also dispute whether Claimant actually made the trip claimed for July 11 - 13, 1997.

Article XIV contains no express limitations requiring an employee to live within or near his seniority territory to qualify for the travel allowance. It also does not provide that an employee who moves off his seniority territory loses his right to the travel allowance.

Nevertheless, Carrier presents a parade of horrors it maintains will result from failing to restrict travel allowances to employees who do not move off their seniority territories. Carrier expresses concern that employees will claim to have moved to Alaska or Hawaii and then, under Article XIV, Section 2, be entitled to airfare "home" every third week.

Carrier's concerns are already met in the Agreement. The Agreement provides for travel allowances for employees who travel home for their rest days. To be entitled to a travel allowance the employee must actually travel to his home, i.e. his bona fide place of residence. Where an employee claims to have moved to Alaska or Hawaii or some other exotic location, or where Carrier has other reasons to suspect the bona fides of a purported move, Carrier will be within its rights to require the employee to document the bona fides of his claimed residence. It should not be burdensome for the employee to produce a lease or other rental agreement or documentation of home ownership. An employee who fails to do so, would be acting at his peril.

In the instant case, Carrier has suggested that Claimant's move was not a bona fide change of residence. However, there is no evidence in the record that Claimant did not in fact move his residence to Eufaula, Oklahoma.

Accordingly, we turn to the purported trip home on July 11 - 13, 1997. The evidence reflects that Claimant worked sixteen hours on July 11 and twelve hours of overtime on July 12, with at least eight hours rest in between. The evidence also shows that the most practical driving route between Rawlins, Wyoming, where Claimant was working, and Eufaula, Oklahoma, covers 1011 miles and require just under 16 hours to complete. If Claimant did nothing but drive, without stopping for food, fuel or rest, he could barely complete the round trip between the time he finished work on July 12 and the time he started work on July 14. Accordingly, Carrier challenged whether Claimant actually made the trip and requested proof.

The proof that Claimant supplied consisted of photocopies of gasoline receipts and letters

from two individuals represented to be coworkers who made the trip with Claimant. The gasoline receipts, however, were not clear. The one receipt that clearly shows a date of July 12, does not show the location of the gas station with sufficient clarity to be read. Two receipts that do show the locations of the gas stations are from subsequent dates. These gas stations are located on secondary roads, off the most practical route utilizing Interstate highways. Thus, if Claimant actually visited those gas stations, the trip would have required more time than Carrier calculated, owing to the lower speed limits of secondary roads. With respect to the purported statements of two coworkers, Carrier submitted records showing that neither individual actually worked for Carrier.

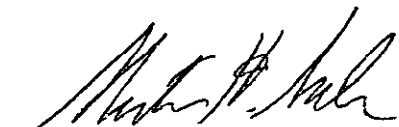
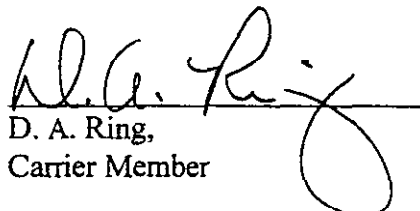
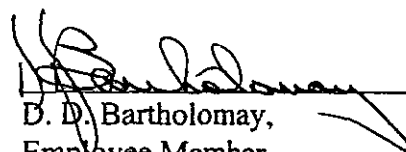
All told, Carrier's evidence showed that it was extremely unlikely that Claimant actually made the trip on July 11 - 13, 1997. Claimant's documentation failed to provide any evidence of probative value that he did, in fact, make the trip. Therefore, the claim for July 11 - 13, 1997, must be denied. The claims for the other dates will be sustained.

AWARD

Claim sustained in accordance with the Findings.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto


Martin H. Malin, Chairman
D. A. Ring,
Carrier Member
D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, August 26, 2000.