BEFORE
PUBLIC BOARD No. 7097

Award No. 10
Case No. 10

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
	)	
vs.	)	**PARTIES TO DISPUTE**
UNION PACIFIC RAILROAD COMPANY	)	

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to pay System Gang employes R.W. Meyer, D.W. Kaup and E.C. Snyder their respective travel allowances in accordance with Rule 36 for their trips home made after the October 8, 2002, break up of System Gang 8573 (System Files UPSW-2014T/1347025, UPSW-2017T/1347029 and UPSW-2021T/1350351).

(2) As a consequence of the violation referred to in Part (1) above, Mr. R.W. Meyer shall be allowed a travel allowance of one hundred seventy-five dollars ($175.00), Mr. D.W. Kaup shall be allowed a travel allowance of seventy-five dollars ($75.00) and E.C. Snyder shall be allowed a travel allowance of one hundred seventy-five dollars ($175.00)."

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employes and Carrier involved in this dispute are respectively Employes and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The Claimants, two roadway equipment operators and one system gang laborer, were regularly assigned to System Gang 8573 which supported System Gang 8572, the P-811 Production Concrete Tie Gang, and was located at Shawnee, Wyoming when the instant dispute arose. The Organization contends that at the close of work on October 8, 2002, the Claimants' and all but six positions were abolished, the gang was no longer performing "production" work, and Gang 8573 constructively broke up, so that the Claimants were each entitled to travel allowance to return from Shawnee to their homes under Section 7(b) of Rule 36.

The Carrier contends that Gang 8573 did not break up until November 6, 2002, but the Organization objects that the production season ended when Claimants' positions were eliminated and that the only work done after October 8, 2002 was the moving of vehicles, cleaning up and preparatory work for the following production season.

Rule 36, Section 7(a) provides:

> 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 workweek. 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: * * *

Section 7(b) provides that the allowance will be paid "at the start up and break up of a gang." Section 7(f) addresses certain circumstances under which a weekend travel allowance will not be paid that are not applicable here.

The Organization is the moving party in this claim and must prove Claimants' entitlement to the benefit sought. (See, among many others, Third Division, Award No. 26033) The critical question is whether Gang 8573 broke up with the abolition of Claimants' positions on October 8, 2002. The Board cannot say that the Organization has met its burden of proof. In Award No. 36810, in determining when

a gang started up, the Third Division explained that although an assignment might have been "'the start up of the work season for Claimant,' the language refers to the 'start up and break up of a gang' without reference to an individual employee." In other words, it is the activity of a gang as a whole, rather than the assignment of an individual employee, that determines when the gang starts up and, similarly, when it breaks up. It is irrelevant that, as the Organization asserts, "Gang 8573 'broke up' insofar as the Claimants were concerned," if the Gang continued to conduct operations that were routine and customary under the circumstances. The Organization objects that the Carrier attempted here to avoid minimum travel allowances for Claimants by abolishing their Gang piecemeal and labeling as mere force reduction what was actually the break up of the Gang. However, the Organization, bearing the burden of proof on the issue, offered no evidence (as opposed to argument) that the abolition of positions was accomplished for anything other than legitimate operational reasons, or that the Carrier abused its discretion by refusing to recognize the October 8 reductions as a break-up of the Gang. Although the purpose of Rule 36 Section 7 is expressly to provide an allowance for employees who are many miles from their homes when their work ends, either for the week or the season, this Board is constrained to honor the parties' agreement as to when employees are eligible for that allowance. If an employee does not qualify under Section 7, then the Carrier has no obligation to pay that allowance.

The record here demonstrates that the Gang continued to work until November 6, 2002. Although it may have been somewhat reduced in size, the Organization has failed to show that its activity was so diminished that it had "constructively" broken up on October 8, 2002. Even if, as the Organization contends, the Gang's work after that date was merely moving vehicles, cleaning up and preparatory work for the following production season, the Organization has failed to show that this activity was so minimal that a break up of the gang had occurred. Because Gang 8573 did not break up on October 8, 2002, the Carrier did not violate Rule 36 by refusing to pay travel allowance to the Claimants.

AWARD

Claim denied.

Lisa Salkovitz Kohn
Neutral Member

Carrier Member

Organization Member

Dated: June 27, 2008