

**BEFORE
PUBLIC BOARD No. 7097**

**Award No. 11
Case No. 11**

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 Agreement was violated when the Carrier failed and refused to pay System Gang employees M.D. Braithwait and R.L. Muir their respective travel allowances in accordance with Rule 36 for their trips home made after the October 10, 2002, break up of System Gang 8574 (System Files UPSW-2016T/1347026, and UPSW-2019T/1347030).
- (2) The Agreement was violated when the Carrier failed and refused to pay System Gang employee D.A. Swane his travel allowances in accordance with Rule 36 for their [sic] trips home made after the October 11, 2002, break up of System Gang 8574 (System Files UPSW-2020T/1347800).
- (3) As a consequence of the violation referred to in Part (1) above, Messrs. M.D. Braithwait and R.L. Muir shall each be allowed a travel allowance of twenty-five dollars (\$25.00).
- (3) As a consequence of the violation referred to in Part (2) above, Mr. D.A. Swane shall be allowed a travel allowance of twenty-five dollars (\$25.00).”

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employees and Carrier involved in this dispute are respectively Employees 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 track machine operators and one System Gang foreman, were regularly assigned to System Gang 8574 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 10, 2002, the positions of Claimants Muir and Braithwait together with 22 of Gang 8572's 38 positions were abolished, the gang was no longer performing "production" work for which it was established, and Gang 8574 constructively broke up, so that the Claimants were each entitled to travel allowance to return to their homes at the end of the season and the break up of their gang, in accordance with Rule 36. The Organization further contends that at the close of work on October 11, 2002, when Claimant Swane's position was abolished, Gang 8574 again constructively broke up, entitling Claimant Swane to travel allowance, in accordance with Rule 36. Each of the Claimant traveled to his home and subsequently displaced another position, Claimants Braithwait and Swane on October 16, 2002 and Claimant Muir on October 25, 2002.

The Carrier contends that Gang 8574 continued to exist and perform production work after the abolishment of Claimants' positions, and did not break up until November 6, 2002. 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's start up. The Organization and the Carrier disagree as to whether the work performed after October 10 and 11 was production work or not, although the Organization indicates that the work was of a type historically and customarily done.

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.

This Board's Award No.10 involved a contemporaneous force reduction in another gang supporting System Gang 8572, and we reiterate our analysis there. 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 8574 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 here. 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.

The Organization objects that the Carrier attempted here to avoid Section 7(b) 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, as in Award No. 10, the Organization 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 10 and 11 reductions as a break-up of Gang 8574. 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.

In this case, unlike Award No. 10, the Claimants exercised seniority to other positions and their work season continued. Had they exercised their seniority so as to comply with the round trip allowance provision of Section 7(f), they might have been entitled to a travel allowance under that provision. Their failure to do so does not make them eligible for a travel allowance under Section 7(b) when no gang break up has occurred.


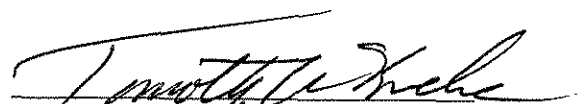
In sum, the record here demonstrates that Gang 8574 continued to work until November 6, 2002. The Carrier has submitted records showing that additional track work was performed in addition to the work cited by the Organization of moving vehicles, cleaning up and preparatory work for the following production season. Although the Gang 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 either October 10 or 11, 2002. As in Award No. 10, because the Claimants' gang did not break up when their positions were abolished, 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
Dated June 27, 2008
Organization Member