

PUBLIC LAW BOARD NO. 7156

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
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 allow "on-line" employee M. Garrett the per diem allowance for September 24, 25, 26, 27, 28, 29 and 30, 2004. (System File MW-05-03/1412594 MPR).
2. As a consequence of the violations referred to in Part (1) above, Claimant M. Garrett shall now receive payment in the amount of three hundred sixty-four dollars (\$364.00) for the per diem allowance for each of the aforesaid dates.

OPINION OF BOARD

Claimant was assigned to On-Track Welding Gang 9154 located at Marlin, Texas working a Compressed I schedule of eight days on and seven days off. Claimant bid for and, effective September 4, 2004, was awarded a foreman's position on On-Line Welding Gang 9434 located at Houston, Texas, with a

schedule of 11 days on and four days off.

Claimant worked on Gang 9154 from September 1 through September 8, 2004. Claimant then went on rest days from September 9 through 15, 2004. Claimant returned to Gang 9154 and worked from September 16 through September 23, 2004 and then took off work commencing September 24, 2004. Gang 9434 (Claimant's new gang) worked during the period September 24 through September 27, 2004. Claimant first reported to Gang 9434 on October 1, 2004.

The claim in this dispute is for per diem allowance for the rest days taken by Claimant during the period September 24 through 30, 2004 — *i.e.*, days prior to his reporting to Gang 9434.

Rule 36(b)(2) provides:

The per diem allowance will be paid for each day of the calendar week, including rest days, holidays and personal leave days. It, however, will not be payable for workdays

that the employee is voluntarily absent from service, or for rest days, holidays or personal leave days when the employee is voluntarily absent from service when work is available to him on the workday immediately preceding or the workday immediately following such rest days, holidays, or personal leave days. ...

As a result of his being awarded a foreman's position on Gang 9434, Claimant was released from Gang 9154 on September 23, 2004 — his last day of work on that gang. Claimant then voluntarily took off work commencing September 24, 2004 and stayed off work until he reported to Gang 9434 on October 1, 2004. However, Gang 9434 (Claimant's new gang) worked on September 24 through September 27, 2004 and Claimant chose not to report to Gang 9434 until October 1, 2004. As of September 24, 2004, Claimant had no obligation to Gang 9154. Instead, as of September 24, 2004, Claimant's obligation was to Gang 9434 — and that gang was working and Claimant did not appear for work on that gang until October 1, 2004. Therefore, because Rule 36(b)(2) plainly provides that the per diem allowance "... will not be payable for workdays that the employee is voluntarily absent from service ..." and because there is no provision in the rule which provides

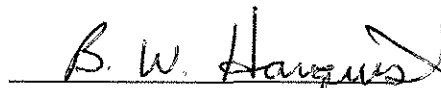
for payment of per diem allowance on a gang's rest days before an employee who, like Claimant, chose to report for his new assignment on that gang, this claim lacks merit.

AWARD

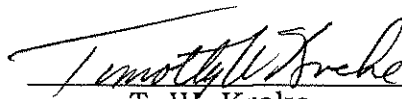
Claim denied.



Edwin H. Benn
Neutral Member



B. W. Hanquist
Carrier Member



T. W. Kreke
Organization Member

Chicago, Illinois

Dated: November 5, 2008