

PUBLIC LAW BOARD NO. 7156

PARTIES)
 TO)
DISPUTE)
 BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
 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" Gang 9107 employe C. K. Loch the per diem allowance for September 7, 9, 10, 11, 12, 13, 14 and 15, 2002 and when it failed and refused to allow him travel allowance for the trip made from his Gang 9107 work location to his residence and returning to his work location. (Carrier's File 1345147 MPR).
2. As a consequence of the violations referred to in Part (1) above, Claimant C. K. Loch shall now receive payment of the per diem allowance in the amount of four hundred sixteen dollars (\$416.00) for the aforesaid dates and he shall receive payment for the travel allowance in the amount of two hundred fifty dollars (\$250) for the aforesaid trip.

OPINION OF BOARD

Claimant was assigned to On-Line Gang 9107 working consecutive compressed halves during Sep-

tember 2002. After allowed election, Gang 9107 worked September 1-7, observed September 8 as Labor Day and then observed rest days on September 9-15.¹

Claimant worked September 1-4; observed two vacation days on September 5-6; took a pre-scheduled personal leave day on September 7; observed September 8 as Labor Day as observed by the gang; and then observed the gang's rest days of September 9-15. Claimant returned to work with the gang on September 16.

A. Per Diem

With respect to the claim for per diem allowance for Claimant, 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,

¹ The gang observed September 8, 2002 as Labor Day. Labor Day was officially September 2, 2002.

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. ...

Further with respect to per diem allowance in this claim, there are two distinct disputes — September 7 (Claimant's personal leave day) and September 9-15 (Gang 9107's rest days). Those two disputed areas will be separately addressed.²

1. September 7

September 7 was taken by Claimant as a personal leave day. The gang worked on September 6. Rule 36(b)(2) provides that "... per diem allowance ... will not be payable for ... personal leave days when the employee is voluntarily absent from service when work is available to him on the workday immediately

preceding such ... personal leave days." Claimant was voluntarily absent on September 6 taking that day as a vacation day. But the gang worked on September 6. Claimant therefore cannot claim per diem for September 7.

2. September 9-15

The next per diem allowance sought by the Organization for Claimant is for September 9-15 — Gang 9107's rest days.

The parties spend a good deal of argument addressing the fact that Claimant took two vacation days on September 5-6. The Carrier points to *PLB 6302, Award 14* which held that per diem was not payable for two rest days when the employee took a vacation day on the day following the rest day as opposed to taking vacation in full week blocks. The Organization points out that when *Award 14* was decided, the vacation rule in effect (in 1995) did not provide for employees to take less than full week vacations, but that changed effective January 1, 1997 under the National Vacation Agreement (Rule 54(o)) which provided that:

Effective January 1, 1997, employees will be permitted to take one week of their vacation allowance per year in less than 40 hour incre-

² In its Submission at 5, the Organization also seeks per diem payment for Claimant for September 8 — the Labor Day holiday observed by the gang ("... the Carrier arbitrarily denied him the \$52.00, per calendar day per diem allowance for the ... September 8, 2002 holiday"). The claim filed on the property and the parties' treatment of the dispute on the property did not seek or address per diem for the Labor Day holiday observed by the gang on September 8. See *Employees' Exh. A*. Nor did the statement of claim quoted in the parties' submission at set forth in this award seek per diem for September 8. Organization Submission at 1; Carrier Submission at 1. We therefore cannot address a request for per diem allowance for Claimant for September 8.

ments, provided that such vacation days will be scheduled in accordance with existing rules applicable to the scheduling of personal leave days.

Award 14 noted that the per diem language did not address partial week vacations, stating “[i]t is not surprising that the Agreement did not address how to treat per diem allowances where an employee takes less than a full week of vacation because such a situation simply did not exist under the Agreement.” *Award 14* denied the claim for per diem for rest days tied to partial week vacations not on the basis of language, but on the basis of an uncontested assertion by the Carrier of a past practice on the property of not paying per diem allowances for weekends preceding vacations of less than one full week.

We need not decide if *Award 14* governs this case or if the change in the vacation language allowing for partial week vacations impacts per diem entitlements in general. We express no opinion on those questions. That is because in this particular case, Claimant cannot receive per diem for the rest days of September 9-15 because he took a personal leave day on September 7.

Rule 36(b)(2) provides that “... per diem allowance ... will not be payable ... for rest days ... when the

employee is voluntarily absent from service when work is available to him on the workday immediately preceding ... such rest days” Because September 8 was observed as the Labor Day holiday, “... the workday immediately preceding ...” the gang’s September 9-15 rest days was September 7. However, Claimant was voluntarily absent that day when he took September 7 as a personal leave day. For that reason, Claimant is not entitled to the per diem allowance for the gang’s rest days of September 9-15 — he did not work on “... the workday immediately preceding ... such rest days” as required by Rule 36(b)(2).

B. Travel Allowance

With respect to the travel allowance portion of the claim, we find the Organization’s assertion that Claimant is entitled to travel allowance also fails.

Rule 37(a)(1) provides for travel allowances recognizing the reality that for gangs like Gang 9107 “[d]uring the work season the carriers’ service may place them [the employees] hundreds of miles away from home at the end of each work week.”

In its March 30, 2003 letter, the Carrier concedes that for gangs

such as Claimant's gang which work compressed halves, the phrase "... at the end of each work week" should be interpreted to mean that "... 'weekend travel allowance,' cover[s] ... travel on an employee's rest days (or in this case, Gang 9[10]7's compressed rest days)."³ Thus, while originally designed for "weekend travel", the Carrier concedes that employees working compressed halves are entitled to travel allowance for their rest days which may not coincide with a calendar "weekend".

Although conceding that travel allowances are also for employees working compressed halves and not just for "weekend travel", the Carrier takes the position in its March 30, 2003 letter that "... there is no violation of Rule 37 or any other provision of the current Agreement when the Carrier does not allow an individual a round-trip travel allowance that does not occur on that individual's rest days."⁴

³ *Id.* at 4-5. In that letter, the Carrier also states "Rule 37 certainly addresses weekends and it is therefore only when the travel is made on the weekend (*scheduled rest days*) is the Claimant eligible to claim the [travel] allowance." *Id.* at 4 [emphasis added].

⁴ *Id.* at 5.

The Carrier is correct that lack of rule support requires denial of the Organization's claim for travel allowance in this case. There is nothing in any rule cited to this Board which provides that an employee is entitled to travel allowance when the employee utilizes a personal leave day as Claimant did on the last work day immediately prior to the gang's scheduled rest days. Absent language agreed to by the parties to that effect, this Board has no authority to add such a requirement.

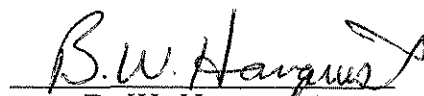
The claim shall therefore be denied.

AWARD

Claim denied.



Edwin H. Benn
Neutral Member



B. W. Hanquist
Carrier Member



T. W. Kreke
Organization Member

Dec 17, 2008

Chicago, Illinois

Dated: 12-17-08