

PUBLIC LAW BOARD NO. 7156

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
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 refused to allow R. A. LeLeux the per diem allowance for the dates of September 24, 25, 26, 27, 28, 29 and 30, 2002 (System File MW-03-03/1342743 MPR).
2. As a consequence of the violations referred to in Part (1) above, Claimant R. A. LeLeux shall now be paid the per diem allowance for the aforesaid seven (7) days in the amount of three hundred sixty-four dollars (\$364.00).

OPINION OF BOARD

Claimant was assigned to Gang 9178 working an alternative work period. Claimant's position on Gang 9178 was abolished at the end of his tour on September 23, 2002, which was the last working day of that gang's compressed half work schedule.

Claimant then exercised his seniority and displaced to a position on

Gang 9179. The two on-line gangs worked the same alternative work period schedules. Claimant began working on Gang 9179 on October 1, 2002 — the first workday available to him on that gang.

Rule 36(b)(1) provides:

Employees who are assigned headquarters of "on-line" (without outfit cars) will be allowed a daily per diem allowance equal to that paid under Award of Arbitration Board No. 298 to help defray expenses for lodging and meals subject to the qualifying provisions of section (b)(2) of this Rule.

The clear language of Rule 36(b)(1) requires that this claim be denied. Rule 36(b)(1) states that "[e]mployees who are assigned headquarters of 'on-line' (without outfit cars) will be allowed a daily per diem allowance ..." [emphasis added]. When Claimant's position on Gang 9178 was abolished on September 23, 2002, he was no longer "assigned" to that gang. Similarly, Claimant was not "assigned" to Gang 9179 until October 1, 2002.

By clear language of Rule 36(b)(1) employees must be "assigned" to an on-line gang to receive the per diem benefit. Because Claimant was not assigned to any gang during the period from the time of the abolishment of his position on Gang 9178 on September 23, 2002 until he began his assignment on Gang 9179 on October 1, 2002, Claimant has no contract right to the per diem sought by the Organization for the period September 24 through 30, 2002.


For reasons explained in *Award 3* of this Board, citing *Third Division Award 35457*, because of the clear language which resolves this matter, the Organization's assertion of the existence of a past practice cannot change the result.

AWARD

Claim denied.



Edwin H. Benn
Neutral Member



B. W. Hanquist
Carrier Member



T. W. Kreke
Organization Member

Chicago, Illinois

Dated: November 8, 2008