

PUBLIC LAW BOARD NO. 7156

PARTIES)
 TO)
DISPUTE)
 BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
 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 8986 employee E. A. Jennings, Jr. the per diem allowance for September 14 and 15, 2002 and the travel allowance for the trip made from his work location at Gore, Oklahoma to his residence at Moline, Kansas and return to work location at Chamois, Missouri (System File MW-03-18/1343944 MPR).
2. As a consequence of the violations referred to in Part (1) above, Claimant E. A. Jennings, Jr. shall now receive payment of the per diem allowance in the amount of one hundred four dollars (\$104.00) and he shall receive the travel allowance in accordance with the provisions of Rule 37 for the aforesaid trip.

OPINION OF BOARD

At the time this dispute arose, Claimant was assigned to On-Line Gang 8986 working in the vicinity of Gore, Oklahoma. Claimant exer-

cised his seniority and bid to a position on Gang 9161 working in the vicinity of Chamois, Missouri. According to the Organization, Gang 9161 worked an alternative work schedule, while Gang 8986 did not.¹

Claimant was awarded the bid to Gang 9161 on September 6, 2002, but was held over on Gang 8986. Claimant's last day of work with Gang 8986 was September 13, 2002. Claimant drove from Gore to his home in Moline, Kansas; stayed home over the weekend of September 14 and 15, 2002; and then

¹ Organization Submission at 2, 8. The Organization's October 29, 2002 claim letter also indicates that Gang 8986 was not working an alternative work schedule with the statement that "... *[a]t the end of each week*, each claimant traveled round trip from work location too [sic] residences and back to work location" [emphasis added]. Employees' Exh. A-1. Moreover, the Carrier's payroll records for Claimant show that while he worked on Gang 8986, Claimant worked eight hour days, but after he began working on Gang 9161, he worked 11 hour days — *i.e.*, indicating an alternative work schedule on his new gang. Attachment 1 to Employees' Exh. A-4.

drove to Chamois, Missouri and began working with Gang 9161 on September 16, 2002 — the commencement of Gang 9161's work cycle.

With respect to the per diem portion of the claim, this case is similar (but not identical) to *Award 6* of this Board. In *Award 6*, we denied a claim for per diem for an employee whose position on one on-line gang was abolished and who exercised his seniority to displace to a position on another on-line gang working the same alternative work period schedule as the gang from which the employee came, with that employee reporting to his new gang on the first work day of his new gang. The specific per diem period sought in that claim was for seven day rest day period which was identical for the two gangs. In denying the claim in *Award 6*, this Board held:

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.

Similarly, in this case, because Claimant exercised his seniority from Gang 8896 to Gang 9161, Claimant was no longer "assigned" to Gang 8896 on September 14 and 15, 2002 for which he claims per diem. In addition, for those dates, because he had not yet reported to Gang 9161, he was not yet assigned to that gang. The rationale in *Award 6* applies to this case, requiring a conclusion that the claim for per diem for dates on which Claimant was not assigned to any gang lacks merit.²

² Given Claimant's movement from and to gangs at different locations and the fact that he moved from gangs working different schedules, this case is distinguishable from *Award 3* of this Board. In *Award 3*, we found under the particularly unique circumstances presented in that case:

This case is fact specific and unique. Claimant exercised his seniority to change from one gang to another; on the relevant dates, both gangs worked the same compressed halves schedules and observed the same rest days; and both gangs were working at the same location under the same individual. For purposes of this dispute, the two gangs were twins. As far as Claimant and the Carrier were concerned, the only thing that really changed from the end of the work cycle on March 15, 2005 to the beginning of the next work cycle on March 23, 2005 was the number on Claimant's gang (and then, by only one digit). A snapshot of this situation shows no other change.

Unlike *Award 3* the circumstances here are quite different given the different locations and schedules of Gangs 8986 and
[footnote continued]

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.

With respect to the travel allowance portion of the claim, we find the Organization cannot carry its burden. Rule 37(a)(1) provides for travel expense "... for each round trip." Claimant did not make a "round trip" on the dates for which travel allowance is claimed. Instead of going from Gore to his home in Moline, Kansas and return (as he would have for Gang 8896), Claimant drove from Gore, Oklahoma to Moline, Kansas and then to Chamois, Missouri. That was not a "round trip" as required by the rule. Moreover, according to the record, Claimant seeks 726 miles in travel allowance as his mileage.³ A round trip from Gore to Moline is approximately 350 miles.⁴ Rule 37(a)(1) provides for different mileage pay-

ments to employees by the Carrier at 100 mile increments. Rule 17 provides:

Rule 17:

Employees accepting a position, in the exercise of their seniority rights, will do so without causing extra expense to the railroad.

* * *

Clearly, given Claimant's mileage request, Claimant's request for mileage resulting from the exercise of his seniority rights from Gang 8896 to Gang 9161 causes extra expense to the Carrier. Rule 17 bars that request.

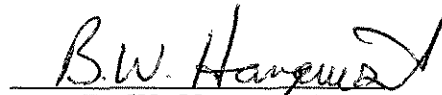
Based on the above, the claim must be denied.

AWARD

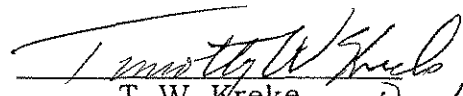
Claim denied.



Edwin H. Benn
Neutral Member



B. W. Hanquist
Carrier Member



T. W. Kreke
Organization Member

Dec 17, 2008

[continuation of footnote]

9161. See note 1, *supra*. Unlike the gangs in *Award 3*, the two gangs involved in this case are not "twins".

³ Attachment No. 1 to Employees' Exh. A-3; Attachment No. 1 to Employees' Exh. A-7.

⁴ See MapQuest, www.mapquest.com.

Chicago, Illinois

Dated: 12-17-08