

PUBLIC LAW BOARD NO. 7736

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES DIVISION - IBT**

Case No. 1
Award No. 1

—and—

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 to provide Consolidated System Gang 8572 Members (i.e., Claimants) with per diem allowances for February 9 and 23, 2014 (System File T-1439U-715/1602197 UPS).
2. As a consequence of the violation referred to in Part (1) above, the Carrier shall provide each Claimant with per diem allowances for February 9 and February 23, 2014.”

FINDINGS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7736 has jurisdiction over the parties and the dispute involved herein.

This claim involves interpretation of Section 2 of the April 25, 2012 Local/National Agreement, which provides, in part,

1. Effective no more than sixty (60) calendar days after ratification, per diem allowances for meals will be increased by \$4.00 applied to the weighted average of straight time days worked by employees headquartered on-line in a month. That adjustment results in the following per diem allowances paid according to work schedules, as follows (a chart showing the methodology and calculations used to create the allowances is attached as Appendix 1 to this Agreement):

		Meals	Lodging	Incident1
Compressed halves - 10 or more hours	\$118.47	\$ 29.00	\$ 77.00	\$ 12.47
4 10s	\$108.82	\$ 29.00	\$ 77.00	\$ 2.83
8 hour work days	\$ 86.01	\$ 29.00	\$ 57.01	

2. Per diem allowances provided to employees headquartered on-line or in other mobile service will only be paid on days when compensated service is performed and days scheduled but not worked at the direction of management (e.g., Hours of Service required rest for CDL drivers, inclement weather).
3. No per diem allowance will be paid to an employee headquartered online or in other mobile service who is working (work site reporting) within fifty (50) miles of their residence.

The facts in this matter are not in dispute. Claimants established and hold seniority in various classes and groups within Carrier's Maintenance of Way and Structures Department. During the time relevant to this dispute they were assigned to Consolidated System Gang 8572, which has no fixed headquarters and is listed as mobile or "on-line."

Beginning on February 4, 2014, the Carrier assigned System Gang 8572 to work a T-1 Compressed Work shift schedule. The gang worked sixteen ten-hour night shifts, beginning at 11:30 p.m. and ending at 10 a.m. the next day. In February 2014, Claimants received eight days of per diem for each eight days of work. Claimants performed services from midnight to 10 a.m. on February 9, and February 23, 2014, but were not provided a per diem allowance for those days, which led to the filing of the claim on March 18, 2014.

The Organization contends that the clear and unambiguous language of the Agreement provides that employees are entitled to a per diem on each day they perform compensated service, and there is no dispute that Claimants performed compensated service on February 9 and February 23, 2014. The Organization argues that Claimants were entitled to per diem for each of those days in accordance with the plain meaning and intent of Section 2. It points out that Section 2 refers to "days," and not "shifts." It further contends that the Carrier agreed that employees who are held over to perform overtime service on an additional day would be paid an additional per diem, demonstrating that they did not intend to limit per diem to once per shift.

The Carrier contends that the clear intent of Section 2 was to pay one per diem allowance for each day that compensated service is performed, and not to pay two per diem allowances for one single compensated day based on its starting or ending time. The Carrier contends that the negotiated language is unclear, because "day" is not defined. Further, the parties' methodology in determining the per diem to be paid makes clear that they intended to compensate employees one per diem for each work day. The Carrier contends that the parties did not intend for an employee to receive nine days of per diem for eight days of work. The Carrier contends that an employee is not entitled to two per diem payments for one shift, simply because it begins on one day and ends on another. The Carrier contends that "compensated service" has a single meaning.

The Board has reviewed the entire record in this case with care. The Organization bears the burden of showing that the parties intended that employees who work eight night shifts over nine days should receive nine per diem allowances. We do not agree that the parties intended for an employee performing eight days of work to receive nine days of per diem, even when the eight days of work occur over nine calendar days.

The context in which this language was negotiated is relevant. Prior to the language at issue here, certain employees received per diem allowance for each calendar day, irrespective of whether compensated service was performed. In the 2012 Local/National Agreement the parties spread the average per calendar day expense amount across the scheduled days worked, stating that per diem allowances are to be paid according to work schedules. The Per Diem methodology found in Appendix 1 of the Agreement calculates the amount to be paid based on number of work days per month, not calendar days.

The Organization argues that employees who worked night shifts incurred additional expenses on the ninth calendar day and should be entitled to an additional per diem allowance. But the parties agreed to an average per diem allowance to be provided to employees based on the number of days worked, irrespective of actual expenses incurred. Each employee receives the same per diem allowance without regard to out of pocket costs.

The Organization points out that the parties agree that if an employee is held over to perform overtime services on an additional calendar day, the employee is entitled to an additional per diem allowance for the overtime worked. That agreement addresses overtime, which is not at issue here. While the parties may agree that employees who work more than their regular work schedule by virtue of working overtime may be entitled to additional per diem allowance, that agreement does not resolve the question here, where Claimants have worked their regularly scheduled days, and no more.

Consequently, the claim is DENIED. Claimants were not entitled to per diem allowances for February 9 and 23, 2014.

AWARD

Claim denied.



Kathryn A. VanDagens, Neutral Member



Kevin Evanski, Organization Member



Brant Hanquist, Carrier Member

Dated: November 10, 2017