

PUBLIC LAW BOARD 6430

Award No. 4
Case No. 4

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

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 and refused to compensate system gang employee V. E. O'Toole the proper amount as stipulated in Section 7 of the August 1, 1998 Implementing Agreement (System File D-9933-3/1177205).
2. As a consequence of the violation referred to in Part (1) above, Claimant V. E. O'Toole shall be allowed one hundred eighty four dollars (\$184.00).

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

The Consolidated System Gang Agreement (August 1, 1998 Implementing Agreement) provides, in pertinent part, that:

Section 7.

(A) Employees filling any Group 20, 26 or 27 position(s) for a period of six (6) months or more as specified hereinafter, will receive one dollar (\$1.00) for each hour they received straight time compensation during the entire six-month period and beyond as applicable. This one dollar (\$1.00) allowance is not subject to future general wage increases or cost of living

allowances unless agreed to otherwise.

Rule 39 (Per Diem Allowances) provides, in pertinent part, that:

(e) On-Line Service. * Employees assigned with headquarters on-line, as referenced in Rule 29, shall be allowed a daily per diem allowance of \$30.00 to help defray expenses for lodging, meals and travel.

The foregoing per diem allowance shall be paid for each day of the calendar week, including rest days, holidays and personal leave days, except it shall not be payable for workdays on which 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 said rest days, holidays or personal leave days. No elimination of days for per diem allowances or vacation credits will occur when a gang is assigned a compressed work week, such as four (4) ten-hour days.

It is not the intent of either party to place Maintenance of Way employees at locations where there is a lack of available meals and lodging within a reasonable distance from the work site. Should a work area selected by the Company present a problem, in which employees are not able to secure the necessary living accommodations, necessary arrangements by the Carrier shall be made to resolve the problem.

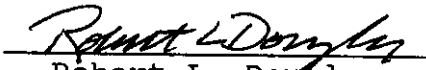
The present dispute involves a disagreement between the parties about the meaning of the term "straight time compensation" in Section 7 of the Consolidated System Gang Agreement. In particular, the Organization asserts that the clause "straight time compensation" requires the Carrier to pay eligible employees one dollar per hour for holidays, personal leave, and vacation that derive from the actual hours that such employees work in any Group 20, 26 or 27 position(s) for a period of six (6) months. In contrast, the Carrier maintains that the clause "straight time compensation" does not require such payments because "straight time compensation" only covers hours that such employees actually work. The Carrier adds that the parties knew how to provide greater precision when they intended to extend certain benefits as reflected in Rule 39(e), which relates to per diem allowances. The Carrier therefore reasons that the absence of such explicit language in Section 7 precludes a finding that Section 7 extends to holidays, personal leave, and vacations.

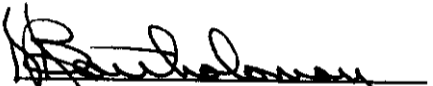
A careful review of the record indicates that the clause "straight time compensation" is silent in this regard. As a result, the clause "straight time compensation" also is arguably ambiguous because it is susceptible to either the interpretation offered by the Organization or the interpretation offered by the Carrier. No other evidence set forth in the present record provides suitable guidance to resolve this uncertainty. In the

absence of greater clarity in the record, this Board lacks the authority to create, devise, or formulate a proper meaning or interpretation for the clause "straight time compensation" in Section 7. Such a determination is a matter for collective bargaining, not arbitration. As a result, the Organization necessarily failed to meet its burden of proof in the present case. The rights of the parties to address this matter in the future are reserved consistent with the Opinion of the Board.

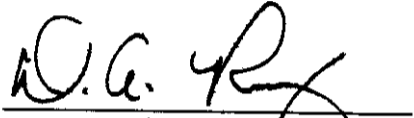
AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Employee Member

Dated: 9/9/2002

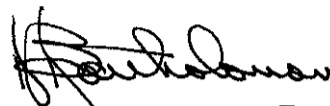

D. A. Ring
Carrier Member

ORGANIZATION'S DISSENT AND CONCURRENCE
TO
AWARDS 2 AND 4 OF PUBLIC LAW BOARD NO. 6430

A dissent is required because the clear language "straight time compensation" needs no other interpretation other than for whatever reason an employee receives straight time compensation, he should be entitled to the one dollar (\$1.00) allowance under Section 7 of the Consolidated System Gang Agreement. No other clarification is needed.

A concurrence is required because the minority recognized that even though oral argument was made on the interpretation of "straight time compensation", no evidence was presented in the two records before the Board to clarify that terminology. It also properly held that since the Organization failed to meet its burden of proof in these two claims, additional evidence in future claims would be and should be considered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. D. Bartholomay", written over a horizontal line.

D. D. Bartholomay
Employee Member, PLB No. 6430

**CARRIER'S RESPONSE TO THE
ORGANIZATION'S DISSENT AND CONCURRENCE
TO
AWARDS 2 AND 4 OF PUBLIC LAW BOARD NO. 6430**

In the Dissent of the Employee Member he states the clear language "straight time compensation" needs no other interpretation. The Carrier agrees and we succinctly set forth our positions during the hearing. The Referee considered the argument of both parties at the Hearing. As the Referee stated, "the clause 'straight time compensation' also is arguable ambiguous because it is susceptible to either the interpretation offered by the Organization or the interpretation offered by the Carrier."

In concluding his award, the Referee did not find that "additional evidence in future claims would be and should be considered." What the Referee specifically stated in addressing "straight time compensation" and these awards was "*Such a determination is a matter for collective bargaining, not arbitration.*"

Referee Douglas's awards were not egregious nor do they constitute a basis for the Organization to attempt to repudiate them.


D. Ring
Carrier Member P.L.B 6430