

PUBLIC LAW BOARD NO. 6638

AWARD NO. 12

CASE NO. 12

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

PARTIES

TO DISPUTE:

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 allow S. G. Melendez travel allowance from his assembly point in Cheyenne, Wyoming to his residence in Keenesburg, Colorado on January 3, 2002 and from his residence to his new assembly point at Lisco, Nebraska on January 6, 2002 (System File C-0236-103/1305111).

(2) As a consequence of the violation referred to in Part (1) above, Claimant S. G. Melendez shall now be compensated \$50.00 for traveling a total of 259 miles from work to home to work by the most direct highway route pursuant to Rule 36."

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

This case involves the issue of Claimant's entitlement to end of work week travel allowance when he displaces onto another gang during their regular work week and travels home prior to reporting to the new gang.

Claimant worked on Gang 9035 during the four (4) ten hour/day work week commencing Monday, December 31, 2001, which included some holidays. On Thursday, January 3, 2002, the last day of the work week, Claimant was displaced by a senior employee, but he was permitted to work on that day. Claimant placed himself on Gang 9052 on January 6, 2002. This claim seeks travel allowance for Claimant's trip to and from his home in the interim, which the Organization asserts is 259 miles by the most direct highway route from his work assembly point in Cheyenne, Wyoming to his residence in Keenesburg, Colorado and to his work assembly point in Lisco, Nebraska. It appears that there was only 18 miles between the locations of Claimant's old and new gangs, and that Gang 9052 was working their regular scheduled workweek between January 1 and 8, 2002.

Controlling this dispute is the following provision of the Agreement.

Rule 36 - TRAVEL SERVICE

* * * * *

Section 7 - End of Work - Week Travel Allowance for Traveling Gangs.

(a) At the beginning of the work season employees are required to travel from their homes to the initial reporting location, and at the end of the season they will return home. This location could be hundreds of miles from their residences. During the work season the Carrier's service may place them hundreds of miles away from home at the end of each work week.

Accordingly, the Carriers will pay each employee a minimum travel allowance as follows for all miles actually traveled by the most direct highway route for each round trip:

* * * * *	
210 to 300 miles	\$50.00

* * * * *

(f) An employee filling a Group 20, 26 or 27 assignment who completes a round trip from work to home to work will not be granted an allowance pursuant to paragraph (a) of this Section when any of the following conditions exist:

(1) the employee is absent without authorization on a work day immediately preceding and/or following the rest days during which the round trip was made;

(2) the employee applies for, receives, and reports for a bulletined position on another gang, not involving the project encompassing the employee's previous assignment, on the work day immediately following the rest day round trip;

(3) instead of exercising seniority displacement rights to an available position of the same or higher class on a gang involving the project encompassing the employee's previous assignment, the employee exercises seniority displacement rights to a position on another gang, not involving the project encompassing the employee's previous assignment, on the day immediately following the rest day round trip;
or

(4) the employee claims and receives a Rule 36 Section 6 transportation allowance for the same period.

(g) If none of the above conditions exist, such employees who complete a round trip from work to home to work will be granted an allowance pursuant to paragraph (a) of the Section.

It is the Organization's position that the language of Rule 36 is clear and unambiguous, and that Claimant did not fall within any of the listed exceptions contained in Rule 36 Section 7(f). It relies upon the fact that once Claimant was displaced on January 3, 2002, at the end of the work week for Gang 9035, he was unassigned, and did not take on the terms and conditions of Gang 9052 until he learned from Carrier that he could displace onto the gang and where it was located, and did so at his first available opportunity upon receiving this information, January 6, 2002. The Organization argues that Claimant did travel home during his weekend (Friday-Sunday) and reported back to work on Sunday, prior to the end of his rest days, thereby meeting the requirements for reimbursement of travel allowance.

Carrier initially argues that Rule 36, Section 7(f) does not apply to Claimant's situation because his travel was not at the end of the workweek or on a weekend, both requirements of that provision. It notes that he was displaced prior to the start of the shift on January 3, 2002, but was permitted to remain and work that day and was released at the end of that shift on Thursday. Claimant's travel was on Thursday and Sunday, not a weekend. Carrier notes that the work week for Gang 9052 which Claimant displaced onto was January 1-8, 2002, and that this claim is for travel in the middle of such work week. Carrier points out that it paid Claimant's travel allowance for travel home on January 8, 2002, at the end of the work week of Gang 9052.

Carrier argues that alternatively, if Rule 36 Section 7(f) could be

construed to apply, paragraphs (1) and (3) require an employee to exercise his seniority on the day immediately following the rest day round trip or have an authorized absence, neither of which occurred since Claimant failed to displace immediately and was not authorized to withhold the exercise of his seniority. Further, Carrier argues that Claimant's situation was not end of work week travel, but was the exercise of seniority covered by the terms of Rule 18, which provides in subparagraph (b), that "employees accepting positions in the exercise of their seniority rights will do so without expense to the Company, except as provided under Rule 37." Carrier asserts that the Organization is attempting to create an expense to Carrier which it has never paid, the voluntary travel home prior to the exercise of seniority to another gang.

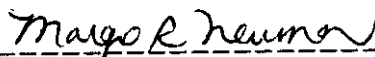
The Board has fully considered the arguments of the parties and the record that was exchanged between them on the property and finds that the Organization has failed to sustain its burden of proving that Carrier violated Rule 36 in this case. As noted by Carrier, Rule 36 applies only to end of work week travel. In this case Claimant was displaced at the beginning of his shift on Thursday, January 3, 2002 but was permitted to remain on the gang until the end of the shift by agreement of the parties. Claimant knew early on January 3 that he had been displaced and needed to exercise his seniority to displace onto another gang if he wanted to maintain certain contractual rights and benefits. Instead of displacing onto Gang 9052 on January 4, when it was located 18 miles from his present position and was in the middle of its workweek, he chose to go home and initiate contact with Carrier during his rest days, contending his delay was caused by Carrier's lack of complete information concerning his displacement rights and the location of the gang. This contention is based upon a written statement not exchanged between the parties on the property. Further, there is no explanation as to why Claimant could not

have gathered the necessary information from his supervisor or Carrier's office on January 3 after he learned he had been displaced. This Board has found that once a displacement occurs, the rights attendant to the position previously held are terminated, and it is the timely exercise of seniority that determines whether certain contractual benefits are payable.

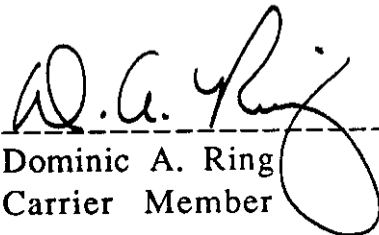
The Organization has failed to establish that Claimant met the conditions for travel allowance in this case, or that he did not fall within one of the stated exceptions to its entitlement contained in Rule 36 Section 7(f). Timely exercise of his seniority would have placed him on Gang 9052 on January 4, 2002 in the middle of their work week, work was available to him on that day, as found in Award No. 10 of this Board, and his decision to travel home on January 3, 2002 did not meet the requirements of Rule 36 Section 7(f). Accordingly, the claim must be denied.

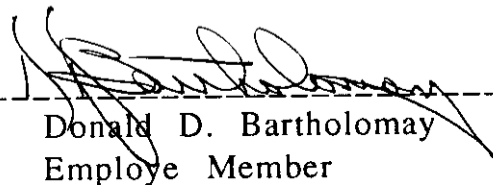
AWARD:

The claim is denied.



Margo R. Newman
Neutral Chairperson


Dominic A. Ring
Carrier Member


Donald D. Bartholomay
Employee Member

Dated: December 11, 2003

Dated: 12-11-03