

PUBLIC LAW BOARD NO. 6867

AWARD NO. 4

CASE NO. 4

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 Carrier violated the Agreement when it abolished the system brant (sic) truck operator position on Gang 8575 held by Mr. B. Rumler on December 8, 2002 without providing him a four (4) working days advance notice of such abolishment as required by Rule 21(a) (System File UPRM-9411T/1355810).

(2) As a consequence of the violation referred to in Part (1) above, Claimant B. J. Rumler shall now **** be compensated for ten (10) hours of wages at the applicable REO rate of pay for Monday, December 16 and \$52 per day per diem for eight (8) days (\$416), December 9-16, 2002."

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 claim involves the issue of whether an employee is entitled to a per diem allowance under Rule 39(e) as well as lost wages for Carrier's failure to comply with the 4 day advance notice requirement concerning abolishment of his position in an on-line system gang under Rule 21, the pertinent part of which provides:

Rule 21 - REDUCTION IN FORCE

If a gang is working a compressed work period and all or some of the position in such gang are to be abolished, the Carrier will have satisfied the advance notice requirement of Rule 21 by giving a four (4) working days notice of abolishment of such positions.

The pertinent section of Rule 39, Per Diem Allowances, provides:

(e) **On-line Service.** Employees assigned with headquarters on-line, as referenced in Rule 29, will be allowed a daily per diem allowance of \$48.00 (\$52.00 effective July 1, 2002) to help defray expenses for lodging, meals and travel.

The foregoing per diem allowance will be paid for each day of the calendar week, including rest 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.

Claimant was assigned as a System Brant Truck Operator for System Gang 8575, which worked a compressed half under Rule 40(a). That gang was assigned to work the first eight days of the compressed half in the first part December, 2002. Claimant was on vacation from December 1-4

and returned to work on December 5, 2002. After his work day he was verbally informed by his supervisor that his position was being abolished effective at the end of the compressed half on December 8, 2002. December 9-15, 2002 were the scheduled rest days of System Gang 8575. The record does not contain evidence of where and when Claimant displaced after his position was abolished.

The Organization contends that since Claimant was not given the required 4 day advance notice, he is entitled to his loss of wages for the fourth day, which would have been the next scheduled work day of the gang, December 16, 2002, as well as the per diem associated with its rest days, citing Third Division Award 31032. Carrier asserts that Claimant is not entitled to any per diem allowance since he was no longer assigned to an on-line position from which such entitlement flows after December 8, 2002, and he had no expenses to defray, which is the intent of per diem payments, relying on Public Law Board 6638, Award 6. Carrier notes that Claimant had the ability to displace on December 9, 2002, and is not eligible for per diem allowance unless he exercises his seniority to another on-line gang at the first opportunity, a factor missing from this case. Public Law Board 6638, Awards 2, 4, 8 and 10. Carrier posits that it offered on the property to pay Claimant an amount equal to one days lost wages for the alleged notice violation, but that the remedy requested by the Organization is excessive.

The Board has carefully considered the record and arguments of the parties and concludes that the Organization has proven that Carrier violated the notice provisions of Rule 21 by giving Claimant only three days advance notice of the abolishment of his position rather than the required 4 days notice. We find that the appropriate remedy is the

payment of one days lost wages for the additional workday, since the purpose of the notice provision is to provide an employee with sufficient time to make plans to exercise his seniority rights to other jobs. Third Division Award 31032.

However, the Board concludes that the Organization has failed to sustain its burden of proving a violation Rule 39(e) in Carrier's denial of per diem allowance to Claimant for the rest day period between December 9 and 16, 2002. The entitlement to per diem allowance, which is intended to defray expenses for lodging, meals and travel, is based upon Claimant's status as a member of an on-line gang. As noted by Carrier, after his position was abolished on System Gang 8575 on December 8, 2002, Claimant was no longer assigned to an on-line gang. We believe that the following rationale of Public Law Board 6638, Award 6 is equally applicable to the factual situation existing herein.

We conclude that the clear language of Rule 39(e) governs this dispute. In order for Claimant to be entitled to receive rest day per diem allowance requested in this claim he must meet the eligibility requirements, and not fall within the stated exceptions. The first eligibility requirement is that Claimant must be performing on-line service. The record reflects that Claimant ceased working on-line with the abolishment of Gang 8578 on November 8, 2001. He no longer had any rights attributable to his position in that gang since it no longer existed after November 8, 2001.

The Organization has not shown that Claimant's next work day would have been December 16, 2002. Since he was no longer associated with the on-line system gang after December 8, 2002, he was eligible to displace into another position on December 9, 2002. Thus, the payment for the one days lost wages associated with Carrier's notice violation

would relate to Claimant's next possible work day, not that of System Gang 8575. There is no basis for the payment of per diem allowance under these circumstances.

AWARD:

The claim is sustained in accordance with the Findings.

Margo R. Newman

Margo R. Newman
Neutral Chairperson

Brant W. Hanquist

Brant W. Hanquist
Carrier Member

Don D. Bartholomay

Don D. Bartholomay
Employee Member

Dated: May 30, 2006

Dated: 5-30-06