

PUBLIC LAW BOARD NO. 6867

AWARD NO. 15

CASE NO. 15

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 pay System Gang employe S. Leonard the per diem allowance for the dates of March 24, 25, 26, 27, 28, 29, 30 and 31, 2003 (System File UPRM-9443T/1363946).

(2) As a consequence of the violation referred to in Part (1) above, Claimant S. Leonard shall now each receive compensation of four hundred twenty-six dollars (\$426.00) for the per diem allowance for the aforesaid dates."

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 raises the entitlement of Claimant under Rule 39(e) to rest day per diem (PD) allowance for his accumulated rest days between

March 24 and 31, 2003. Employees working in "on-line" service are permitted a PD allowance under the following terms of Rule 39 - Per Diem Allowances:

(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, holidays and personal leave days, except it will 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.

Appendix X-1 defines "the employee is voluntarily absent" language of Rule 39(e) as "the employee has failed to render compensated service on a workday on which work was available to him."

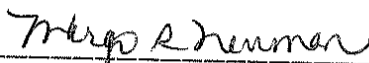
Claimant was a member of System Tie Gang 9068 working compressed halves. As with his fellow gang members encompassed in this Board's award in Case No. 14, he completed his work days (March 16-23, 2003), went home for his rests days, and returned to work on April 1, 2003 only to find that he had been displaced by a senior employee prior to the start of his shift and was unable to exercise his displacement rights onto another gang until the following day. He did not perform

compensated service for Carrier on April 1, 2003, the day immediately following his accumulated rest days. On that basis Carrier denied his request for rest day PD for the period March 24-31, 2003, and the Organization instituted the instant claim.

This case is similar in all respects to Case No. 14 recently decided by this Board. In that case, six other members of the same gang found themselves in the same position as Claimant on April 1, 2003. Since the arguments of the parties and the underlying records are substantially the same, they will not be repeated herein and their recitation in Public Law Board No. 6867, Award 14 is incorporated in this decision. We do note the absence of any employee statement in this record. A review of our awards in Case Nos. 13 and 16 dealing with entitlement to travel allowance for members of System Gang 9068 for the same time period reveals that the Board held that its decision in Case No. 13 with regard to four gang members was applicable in all respects to Claimant, whose case was presented in Case No. 16. Similarly, this Board concludes that all of the reasons stated in Award 14 and the rationale for finding no violation of the Agreement by Carrier in its denial of rest day PD in these circumstances, and the application of the principle of *stare decisis* concerning Public Law Board No. 6638, Award 4, are equally applicable in this case, and we adopt them in denying this claim.

AWARD:

The claim is denied.



Margo R. Newman
Neutral Chairperson

Brant W. Hanquist
Brant W. Hanquist
Carrier Member

Timothy W. Kreke
Timothy W. Kreke
Employee Member

Dated: 4-23-08

Dated: April 23, 2008