

PUBLIC LAW BOARD NO. 6867

AWARD NO. 23

CASE NO. 23

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 employee J. B. Miller a travel allowance for the round trip he made from Des Plaines, Illinois to Martinsville, Missouri on June 8, 2002 and returning to Des Plaines, Illinois on June 16, 2002 as provided in Rule 36 (System File C-0236-108/1329426).

(2) As a consequence of the violation referred to in Part (1) above, Mr. J. B. Miller shall be allowed a travel allowance of two hundred twenty-five dollars (\$225.00)."

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 issue of the entitlement of Claimant to travel

allowance for his round trip made on June 8 to his residence and on June 16, 2002 back to the job site. The following provisions of Rule 36 - Travel Service, are pertinent to this dispute:

### **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:

0 to 100 miles	\$ 0.00
101 to 200 miles	\$ 25.00
201 to 300 miles	\$ 50.00
301 to 400 miles	\$ 75.00
401 to 500 miles	\$100.00

Additional \$25.00 payments for each 100 mile increments.

\* \* \* \* \*

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;

(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.

Claimant was a member of System Gang 9072 which was working compressed halves, with their rest days scheduled from June 9 through June 15, 2002. He traveled a round trip distance of 960 miles during this

rest period and reported to the work site on June 16, 2002 but was displaced from his System Gang position before he commenced work after the expiration of his aggregated rest days, and he performed no work with that gang on the day after his rest days. Carrier denied his claim for travel allowance under Rule 36 for this round trip, which led to the filing of the instant claim.

This case is similar in all respects to Case Nos. 13 and 16 recently dealt with by this Board. In those cases, members of the same gang found themselves displaced after returning to their work location but prior to the start of their compressed work period, and they did not perform compensated service on the day immediately following their rest days. Most of the arguments of the parties and the underlying records are substantially the same as those recited in Public Law Board No. 6867, Award 13 and are incorporated in this decision. We do note that, as in Award 16, there is no employee statement submitted with reference to Carrier's practice concerning displacements in this case.

This record focuses more specifically on Carrier's consistent interpretation of the term "work" contained in Rule 36, Section 7(f) to mean that the employee must actually perform work on the assignment on the day immediately prior to, and after, the employee's rest days, and its contention of a binding past practice since the inception of the travel allowance rule in 1996 which it asserts has been accepted by the Organization without challenge. Carrier included with its denial on the property the claim documents filed by the Organization in 1998 which challenged Carrier's refusal to pay travel allowance in a situation where an exercise of seniority was involved, Carrier's assertion that the displacing employee may be entitled to a travel allowance and it was not required to

pay twice for one position, and the fact that the claim was not pursued further by the Organization, a contention which was not rebutted. The Organization's final appeal raises the contention that Claimant does not fall within the exception language contained in Rule 36, Section 7(f)(1) since he was not absent without authority on the work day immediately following his rest days as he was displaced prior to the start of the work shift and had no assignment to be absent from.

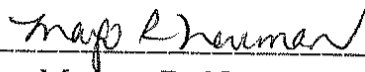
This Board concludes that all of the reasons stated in Award 13 and the rationale for finding no violation of the Agreement by Carrier are equally applicable in this case. Additionally, we are faced with a record that supports the finding of a consistent past practice by Carrier of interpreting the travel allowance requirement of "work" in Rule 36, Section 7(f) and (g) to mean the actual performance of service, and the denial of entitlement to an employee displaced prior to the start of the work shift immediately after his rest days, knowledge by the Organization of such practice, and acquiescence in it over an extended period.

The Organization's contention that Claimant does not fall within the exception contained in Rule 36, Section 7(f)(1) since he could not have been absent without authority on June 16, 2002 because he had been displaced and had no assignment to be absent from does not help the validity of its claim, since Rule 36, Section 7(f) requires that in order to be eligible for travel allowance an employee must be "filling a Group 20, 26 or 27 assignment" and complete a round trip from work to home to work. As argued by Carrier, since Claimant was not filling such assignment due to his displacement, he did not meet the eligibility requirements for receipt of travel allowance.

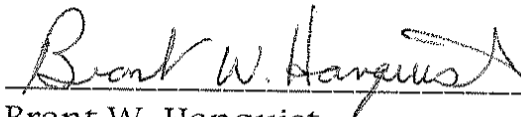
For all of these reasons and those mentioned in Awards 12, 13 and 16 of this Board, we conclude that the Organization has failed to meet its burden of proving a violation in this case.

AWARD:

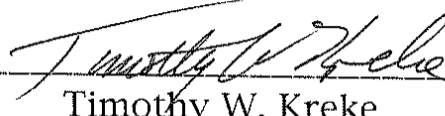
The claim is denied.



Margo R. Newman  
Neutral Chairperson



Brant W. Hanquist  
Carrier Member



Timothy W. Kreke  
Employee Member

Dated: 4-23-08

Dated: April 23, 2008