

PUBLIC LAW BOARD NO. 7098

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYEES DIVISION
(
(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 employees J. Jacobi, A. Thompson, D. Bartachek and R. Beal their per diem allowances for the dates of September 24, 25, 26, 27, 28, 29 and 30, 2002 (System File UPRM-9380T/1343950).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Jacobi, A. Thompson, D. Bartachek and R. Beal shall now each receive compensation of three hundred sixty-four dollars (\$364.00) for the per diem allowance for the aforesaid dates.”

FINDINGS:

Public Law Board No. 7098, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimants were assigned to on-line System Surfacing Gang 9081. Pursuant to Rule 40(a) of the Agreement, they worked a compressed half work period consisting of eight consecutive days of work each pay period followed by rest days for the remainder of the period.

In the first half of September, 2002, the Claimants worked September 1 through 8 and had accumulated rest days September 9 through 15. In the second half of the month their workdays were from September 16 through 23, 2002, with scheduled rest days for the remainder of the month. Sometime prior to September 23, 2002, in accordance with Section 5(B) of Appendix T of the Agreement, the Claimants gave notice to their supervisor that they were not agreeable to

moving with their assignment, which, effective October 1, 2002, was scheduled to move off their CW home road/region territory in Iowa to CE territory in Illinois.

On Tuesday, October 1, 2002, the Claimants exercised their seniority to displace into System Gang 9048, an on-line gang with the same compressed half work period schedule as their previous gang of eight workdays followed by rest days for the remainder of the pay period. October 1, 2002, was the first day of the compressed half work period for both Gangs 9081 and 9048. Claimants were not paid per diem allowances for the accumulated rest days of September 24 through September 30, 2002. On October 23, 2002, the Organization by Vice Chairman R. D. Mulder filed a claim with the Carrier contending that the Claimants were entitled to be paid a daily per diem allowance for those rest days.

The facts of this case are identical to those in Award No. 2 of Public Law Board 7098 except for the names of the Claimants and the specific gangs involved. In both cases the Claimants gave the required ten working days' notice of their desire to walk off of their on-line gang. In both cases the Claimants exercised their seniority to displace into an on-line gang in their home road region/territory after they were notified that their current gang was moving from CW territory in Iowa to CE territory in Illinois. In both cases the Claimants exercised their seniority into a new on-line gang on October 1, 2002. In both cases the new gang worked an identical consecutive compressed half work schedule as their prior gang. In both cases the Carrier denied per diem allowances for the accumulated rest days of the pay period on their former assigned gang that fell after September 23, 2002, their last day of work on that gang. In both cases the Organization filed a claim on behalf of the Claimants requesting payment for them for the rest days in question.

The arguments of the Organization and the Carrier in this case are the same as those made in Award No. 2 of this Public Law Board. This Board's ruling is the same in this case as in the prior case. The Claimants vacated their positions on Gang 9081 as of the end of their shift on September 23, 2002. As of that time they were free to exercise seniority to displace into a

different gang. The Carrier did nothing to interfere with their exercise of seniority. It did not request them to remain on Gang 9081. It did not give them an assignment to perform on any of their rest days after September 23, 2002. It did ask them to move with the remaining members of the gang to the new assembly point. The Carrier did nothing inconsistent with the release of the Claimants from Gang 9081 as of the end of their shift on September 23, 2002.

Because the Claimants had vacated their positions as of September 23, 2002, they were no longer on Gang 9081 or on any other gang as of that date. To receive per diem allowance pursuant to Rule 39(e) for the rest days in question, Claimants were required to be assigned to an on-line gang on those days. They were not so assigned and therefore were not entitled to receive per diem allowance for the days. The Board so finds.

The Board also notes that the evidence shows that the Carrier acted consistent with how it has handled walk-off situations since Appendix T, which permits walk-offs, first became part of the parties' collective bargaining agreement.

For a more detailed and comprehensive discussion of the issues in this case see Award No. 2 of this Public Law Board.

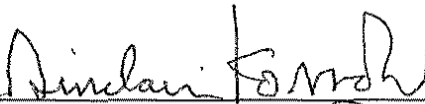
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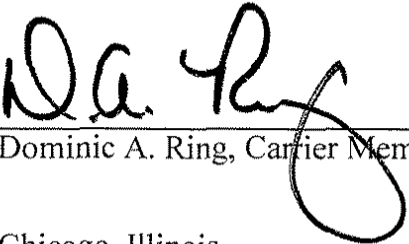
Claim denied.

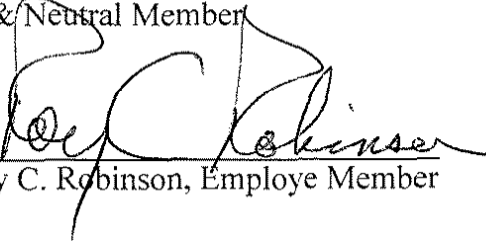
O R D E R

This Board, after consideration of the dispute identified above, hereby orders that

an award favorable to the Claimants not be made.


Sinclair Kossoff, Chairman & Neutral Member


Dominic A. Ring, Carrier Member


Roy C. Robinson, Employee Member

Chicago, Illinois
Dated: August 4, 2008