Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13009
Docket No. 12847
96-2-93-2-215

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (System Council No. 6 - International
(Brotherhood of Firemen & Oilers
(
(CSX Transportation, Inc. (former
(Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM:

"1. The Seaboard Coast Line Railroad Company (CSXT) violated Article I of the September 25, 1964 Agreement when it force assigned two (2) Tampa, Florida - Yeoman Yard employees Messrs. M. A. Milian and C. E. Williams, who were drawing a dismissal allowance, pursuant to the protection benefits of the September 25, 1964 Agreement, to positions at Waycross, Georgia (more than 275 miles distant) which consequently required a change of their residence to a seniority point different than their own rather than face loss of their guaranteed source of income, insurance benefits and other benefits to which a dismissed employee is entitled to under the agreement.

2. That Carrier be ordered to allow claimants M. A. Milian and C. E. Williams to return to their home residence and resumption of the protective benefits they were receiving prior to the forced assignment."

FINDINGS:

The Second Division of the Adjustment Board, 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimants were furloughed Laborers at Tampa, Florida. After discontinuing Cab Supplyman positions at Tampa, the Carrier agreed to grant the Claimants the protective benefits of Article I, Section 1 of the September 25, 1964 National Agreement, beginning December 11, 1991. The Claimants were drawing dismissal allowances in accordance with Article I, Section 6. Both Claimants filed applications to indicate their interest in transferring to other locations when the opportunity might arise.

In January 1993, the Carrier had two vacancies for Laborers at Waycross, Georgia (275 miles from Tampa) after all furloughed employees at that location had been recalled. As a result, the Carrier wrote to the Claimants in pertinent part as follows:

> "This is to notify you of a permanent vacancy on a Laborer position at Waycross, Georgia, which is available to you by exercise of your seniority under Rule 23(f) of your working agreement.
>
> * * *
>
> Section 6 of the September 25, 1964 Agreement [Section 7(j) of the WJPA] provides that a dismissal allowance shall cease in the event of an employee's failure to return to service after being notified of position for which he is eligible. You will, of course, forfeit your protection under provisions of the September 25, 1964 Agreement if you fail to accept employment available by virtue of your seniority rights under Rule 23(f)."

The Claimants, despite their earlier expressed interest in permanent positions at "all" locations, did not wish to transfer to Waycross. Faced with the alternative of losing protective benefits, they nevertheless reported to and commenced work at Waycross, under protest.

Rule 23 reads in pertinent part as follows:

> "(f) When furloughed men are needed at other points they will upon application be given preference to transfer, with privilege of returning to home station when forces are increased at home station, such transfer to be made without expense to the company, seniority to govern...."

Article I, Section 6 of the September 25, 1964 Agreement incorporates Section 7 of the Washington Job Protection Agreement, of which paragraph (j) reads in part as follows:

"(j) A coordination allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service in accordance with working agreement after being notified of position for which he is eligible and as provided in paragraphs (g) and (h)."

Paragraph (g) is pertinent and states as follows:

"(g) An employee receiving a coordination allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement."

The Carrier also refers to moving expense allowances in the September 25, 1964 Agreement, which could be available to the Claimants in relation to their reassignment to Waycross.

The Organization contends that Rule 23(f) has been superseded and is no longer in effect, referring to Memorandum Agreement 8-012-91 between the Carrier and the Organization. The Board finds, as pointed out by the Carrier, that this Memorandum Agreement is confined to "promotions" and performance of "extra and relief work," and thus there is no basis to consider that Rule 23(f) is no longer in effect.

The Board finds that the Carrier is attempting to combine two different concepts which are not compatible. As argued by the Organization, Rule 23(j) provides an opportunity for a furloughed employee to accept a position elsewhere, but it clearly does not require the employee to do so. This is borne out by the provision that such a transfer from a home location is to be "without expense to the company," implying, of course, that the employee must accept the cost of such relocation in accepting this opportunity. To this, the Carrier argues that the moving expense provisions of the September 25, 1964 Agreement could be made available and thus convert the move into a mandatory one. The difficulty with this is that Rule 23(j) says what it says, and it cannot be altered simply by an offer to provide moving expense applicable to other situations.

Instances involving the loss of protective benefits by failure to accept another position are the subject of many Awards. Such Awards, many of them cited by the Carrier, involve situations where seniority rights may extend to other locations; the question of relocation occurs at the time of the "transaction," especially the transfer of work from one location to another; special provisions of an implementing agreement; or where the refusal is in relation to a position where no relocation would be required. Thus, the circumstances here are clearly distinguishable. Rule 23(j) provides a benefit for employees if they wish to transfer without expense to the Carrier. WJPA Sections 7(g) and (j) in combination state that return to work from furlough is not mandatory if it requires, as here, a change in place of residence. Thus, there is no basis to terminate protective benefits under these circumstances.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 10th day of July 1996.