Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13172
Docket No. 13044
97-2-95-2-35

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

"DISPUTE - CLAIM OF EMPLOYEES

(1) The Carrier violated the provisions of the Memorandum of Agreement between the Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company and certain of the its employees represented by Sheet Metal Workers' International Association, signed May 21, 1991, when they failed to send David R. Merrill a copy of Side Letter No. 5 of the above mentioned Agreement to his last known address.

(2) That accordingly, the Southern Pacific Transportation Company afford David R. Merrill all moving allowances received by junior employee H. DoBynes. That the Carrier should be ordered to enter David R. Merrill's seniority date senior to G. DoBynes on the Colorado Division-Mechanical Roster."

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 were given due notice of hearing thereon.

On March 8, 1991 Carrier and the Denver Rio Grande Western Railroad Company (D.R.G.W.) issued a notice of intent under the New York Dock Conditions to consolidate specified work. The parties executed an Implementing Agreement which, inter alia, incorporated the Labor Protection Conditions of the New York Dock Agreement for the arbitration of disputes and resulted in the transfer of work from Sacramento Locomotive Works in California to the Burnham Shop in Denver, Colorado and the creation of 30 Sheet Metal Workers positions in Denver. Employees electing to transfer were dovetailed into the applicable seniority roster in Denver and had the option of receiving certain benefits including moving expenses.

In Side Letter No. 5 of the Implementing Agreement the parties dealt with employees who were furloughed in Sacramento prior to March 8, 1991. Claimant falls within this category. That letter allowed such employees the option of being placed at the bottom of the appropriate seniority roster in Denver if they notified Carrier of their desire to transfer within 60 days of the execution of the Implementing Agreement. It also obligated Carrier to send a copy of Side Letter No. 5 to the last known address of each furloughed employee at Sacramento. There is no dispute that the Implementing Agreement did not provide for the furnishing of moving expenses to furloughed employees.

Sacramento Sheet Metal Worker DoBynes, who had been furloughed prior to March 8, 1991, moved to the Burnham Shop on January 4, 1992. He sought a wage guarantee and dovetailing into the seniority roster in March, 1993, which were denied by Carrier, who discovered that DoBynes had mistakenly been allowed compensation for moving expenses. While the moving expenses were never recovered, no claim was ever filed on behalf of DoBynes seeking additional benefits under the Implementing Agreement. In July, 1992, furloughed Sheet Metal Worker T.W. Holland also transferred to Denver, but received no moving expense or other benefits and was placed below DoBynes on the seniority roster despite his having been more senior in Sacramento.

On August 21, 1992 Claimant transferred to Denver. It is his failure to receive the same moving allowance as DoBynes and his placement below DoBynes on the seniority roster that forms the substance for the instant claim which was filed on May 10, 1994. The Organization's initial request for compensation on behalf of Claimant was sent to Carrier's Employee Relocation Department on September 2, 1993, over a year after the transfer took place. The Organization avers that Claimant did not receive a copy of Side Letter No. 5, despite Carrier having his current address on file. It furnished copies of three letters from furloughed Sheet Metal Workers as well as from Claimant indicating that they had not received notice of the transfer opportunity.

The Organization relies upon the following language in Side Letter No. 12 of the Implementing Agreement in seeking moving expenses for Claimant:

> "....It was agreed that in the event benefits are provided others as a result of future negotiations or arbitration regarding this particular transaction which exceed the benefits contained in the above referenced agreement, the employees will be allowed to elect those benefits or those benefits negotiated by their respective Organizations."

Carrier initially raises three procedural objections to the instant claim. First, it contends that this Board is not empowered to resolve disputes arising out of the New York Dock Agreement since it contains its own specific dispute resolution process which was incorporated into the Implementing Agreement, relying upon Second Division Award 12337. Second, Carrier argues that the express provision of the Implementing Agreement relied upon for reimbursement requires submission of moving expenses within 90 days of incurring the expense. It contends that the doctrine of laches prevents Claimant from collecting for an expense incurred over a year previous. Third, Carrier relies upon Rule 31 as establishing a 60 day time limit for filing claims under the current agreement, and notes that this claim was not filed until 21 months after Claimant transferred to Denver.

With respect to the merits, Carrier contends that only people working at the time were entitled to moving expenses under the Implementing Agreement, and since Claimant was furloughed at the time he was not so entitled. Further, Carrier argues that the Organization failed to sustain its burden of proving that DoBynes' moving expenses were received through negotiation or arbitration as required by Side Letter No. 12.

rather than through mistake. It notes that it was not obligated to sue to get this money back in order to show that it was given inadvertently.

Carrier also argues that it sent Side Letter No. 5 to Claimant who was entitled to be placed at the bottom of the seniority list (albeit above DeBoynes) if he gave the appropriate 60 day notice of intent to move. It contends that even if Claimant did not receive this letter, he did not assert his right to be placed above DeBoynes on the seniority list until over a year after he had transferred. Carrier notes that it offered to place Claimant above DeBoynes on the seniority roster in Denver if others affected agreed, but that the Organization did not pursue that matter further during the processing of the claim on the property.

After consideration of the entire record, the Board concludes that although it is empowered to resolve this dispute, Carrier's timeliness objections have merit. Even if Claimant did not receive a copy of Side Letter No. 5 as was required by its terms, he certainly had notice of his right to transfer to Denver thereunder prior to August 21, 1992, when he actually moved to that location. Further, the only other entitlement affected by Claimant's lack of receipt of Side Letter No. 5 would have been his placement on the seniority roster above DoBynes if he had notified Carrier and elected to move to Denver prior to January 4, 1992. The Organization failed to provide any explanation for the delay between Claimant's actual move on August 21, 1992 and the filing of the instant claim seeking a change in his seniority position in May, 1994. It is not reasonable for this Board to assume that during that interim 21 month period of time, Claimant was unaware of his position on the seniority roster vis-a-vis DoBynes. Since the Agreement requires that claims be filed within 60 days, that aspect of the claim must fail.

Further, the claim for moving expenses is also untimely. First, under the Implementing Agreement, expense claims are to be submitted to Carrier within 90 days of their being incurred. Claimant incurred his moving expenses in August, 1992, yet waited over one year to request such expenses. Second, there is no evidence in the record indicating that Claimant first discovered that DoBynes received moving expenses until September, 1993. In fact, the Organization had notice as early as March, 1993 that DoBynes' request for additional expenses were denied, and that Carrier claimed that he had received moving expenses by mistake. Third, assuming, arguendo, that the claim was timely, there is no doubt that furloughed employees were not entitled to moving expenses under Side Letter No. 5. The Organization has not shown that the conditions

set forth in Side Letter No. 12 were met as a result of the mistaken expenses paid to DoBynes.

For all of these reasons, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 29th day of October 1997.