

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(James M. Douglas, Referee)

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim that Signal Maintainer Robert R. Patterson be reinstated, returned to the position of Signal Maintainer on the Menoken Section and paid for all wage loss subsequent to March 27, 1944.

OPINION OF BOARD: This is a discipline case arising out of employee's refusal to comply with one of the provisions of Signal Department Rule 703 requiring employees to reside "wherever required." Employee was charged with violating this rule "by refusing to reside on the Maintainer Section for which you bid and were assigned." After a hearing he was dismissed for such violation.

Employee was a signal maintainer. He bid and was assigned a position on the Menoken, Kansas, Section. The bulletin contained the statement: "Remarks. Living quarters in depot at Kiro."

One of employee's arguments is that the Carrier is not authorized to designate the particular dwelling in which the employee is required to reside. This is answered by a statement of the Carrier addressed to the General Chairman that the maintainer assigned to this section would be permitted to "reside wherever on the section may be most desirable to him, subject, of course, to there being available there housing for his motor car, tools and equipment."

Employee further argues that the depot was not suitable for a home. No rule could be justified which would require a person to live in a building unfit for habitation. But the record shows that the depot has been used since 1936 and is now being used by the maintainer of the section for residence purposes. Photographs of the depot and its interior placed in the record as exhibits demonstrate it is suitable for habitation.

The real essence of employee's position is that he could meet all the requirements of the position on the Menoken Section, including the duty to respond promptly when called and to be fully available for emergency service, by residing in Topeka where he owns his home. He shows that his home is only 5.3 miles from the end of the Menoken Section and 7.7 miles from the depot at Kiro; that a good highway connects his home and the depot; that his home is on the outskirts of Topeka, obviating the necessity of traversing congested areas; that he owns an automobile; that he has a telephone. This argument is no answer to the explicit requirement of Rule 703. In advancing it employee is attempting to justify his own choice as to where he will reside. But such choice is not his. Rule 703 gives the Carrier the right to determine this matter, not the employee.

The record does not show the Carrier has exercised this right arbitrarily. The fact that in some instances the Carrier permits the signal maintainer to live off of his section does not justify employee's claim. In those instances reported in the record the employee resides "wherever required" in conformity with the rule as

determined by the Carrier, not the employee. Moreover the surrounding conditions in those instances are not comparable to the situation in this case.

Employee seeks support for his position in Award 1120. The facts in that case are more similar to the ones at bar than those of any other award cited. But there is a striking difference which makes that award not apposite here. The rule under consideration in that case provided "employees are required to live wherever the business of the company demands," thus making the place of residence a question of fact determined by the demands of the business rather than one of judgment determined by the carrier, such as we have in the instant case.

The facts of this case do not call for any consideration of Rule 703 in the light of public policy. It is conceded that the Carrier has the right to make rules for the maintenance of its signal system. The demands of the service justify the residence requirement.

Inasmuch as employee has refused to comply with Rule 703 we must hold that his dismissal was authorized.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 15th day of June, 1945.