

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim that D. W. Richards be reimbursed for cost of moving his household goods, a total of \$44.51, from Pasco to Seattle, Washington, March 1945.

EMPLOYEES' STATEMENT OF FACTS: D. W. Richards is a signalman, with a seniority date of 3-15-39, class 3 and 4, 9-1-43, class 2 on the Western District of the Northern Pacific Railway Company. This district extends from Seattle, Washington, east including branch and main lines to Paradise, Montana, a main line distance of 585 miles. This district also includes that portion of the Northern Pacific Railway Company from Seattle, Washington to Sumas, Washington, a main line distance of 120 miles, and from Seattle, Washington to Portland, Oregon, a main line distance of 212 miles.

Richards had worked for a period of nine (9) months immediately prior to September 1, 1943 as an assistant signal maintainer at Pasco, Washington, having secured that position by virtue of his seniority rights. The agreement in effect at that time permitted a job to be filled for temporary periods of nine (9) months, after which it had to be rebulletined as a permanent position. On September 1, 1943 Richards exercised his seniority rights and accepted a position of signalman in the division signal gang. This gang is subject to being assigned to perform work at any point on the district. It is not uncommon for the gang to be moved from one location to another on very short notice. The headquarters of the men is in camp cars which are moved with the gang. However, most men in the gang, with any appreciable amount of seniority, are married men and therefore maintain a home at some central location on the district so they can more frequently be with their families during week ends.

Pasco, Washington was where Richards lived while working as an assistant signal maintainer and is the city on the Northern Pacific railroad nearest to the site of the U. S. Government's so-called "Manhattan Project," which is the name of the project where to a very large extent the atom bomb was developed and produced. It (the Manhattan Project) was the number one war production project for manpower in the entire United States and as a result thereof the need for housing for workers at this plant was most acute.

Immediately after Richards was required to return to the gang, account promotion to signalman, he started looking for living quarters in Seattle, as this location is quite centrally located on the district (more accessible to working points on the district) and would thus afford him the best opportunity of seeing his family during week ends. On account of the hous-

quarters had not been changed. If Mr. Richards desired to move his family to Seattle that was for his or their own convenience and was not incident to the exercise of seniority or changing quarters. Therefore, insofar as Rule 36 is concerned, there is no foundation for this claim.

With regard to the second proposition, namely:

“Whether he should be compensated for the expense involved in transporting his household goods via a highway truck line.”

When this case was discussed on the property with the Employes' representatives, they requested that consideration be given to reimbursing Mr. Richards for the freight charges which he had paid in the movement of his household goods from Pasco to Seattle. The Carrier advised the Committee that while there was no foundation for the claim under schedule rules, it would be agreeable to reimbursing Mr. Richards for the freight charges he had paid in the movement of his household goods via the Northern Pacific Railroad from Pasco to Seattle. The Employes thereupon submitted a receipt from the Consolidated Freightways which is quoted in the Carrier's Statement of Facts.

When this receipt was received, the Carrier declined to reimburse Mr. Richards for the reason that the expense included crating and also movement via a highway trucking line.

What the Employes are now asking this Board to do is sustain the claim for crating his household goods and also for shipping charges via a highway trucking line.

Insofar as the crating charges are concerned, there is no basis for such claim as had the goods been shipped by rail, the Carrier would not have paid the crating charges, there being no requirement that it do so under the provisions of Rule 36.

With regard to the claim for reimbursement for shipping charges, namely, \$28.07. Rule 36 provides that employes accepting positions in the exercise of seniority will do so without causing any extra expense to the Railway Company. Payment of the shipping charges would result in extra expense to the Railway Company and the payment of these charges are therefore barred by the provisions of Rule 36. Furthermore, free transportation of household goods mentioned in Rule 36, is free transportation over the rails of this Company as that is the only free transportation the Railway Company can furnish. Rule 36 does not provide that an employe will be reimbursed for expense of moving household goods. All that that rule provides for is that the Carrier will furnish free transportation of household goods. Had Mr. Richards used this Railway to move his household goods, the Carrier was agreeable to reimbursing him for the freight charges he had paid, even though schedule rules do not under the circumstances in this case require that this be done. As he elected to use another mode of transportation, there is no foundation for his claim, first because schedule rules do not sustain it, and secondly because there is no provision in these rules that require reimbursement of expense incurred in the movement of household goods.

In Award 2607 this Board sustained the proposition that the free movement of household goods is confined to the railroad facilities of the employing carrier in the absence of a specific rule to the contrary, or in the absence of past practices of sufficient uniformity and duration as to amount to a mutual understanding to that effect. There is no provision in the Northern Pacific Signalmen's Agreement that requires the Carrier to reimburse employes for freight charges incurred in moving household goods by another carrier, and in no previous case has the Carrier reimbursed employes for freight charges of household goods when moved via other than the facilities of this Carrier.

OPINION OF BOARD: This is a claim for reimbursement of the expenses of moving household goods. The claim is stated as for \$44.51. It must be divided into claim for \$28.07 for transportation charges, and \$16.44 for crating expense.

Rule 36 of the Agreement is:

"Employes accepting positions in the exercise of their seniority rights will do so without causing any extra expense to the Railway and will not be allowed time for traveling.

"They will be allowed free transportation for themselves, dependent members of their families, and household goods, when it does not conflict with State or Federal laws, but free transportation of household effects under this circumstance need not be allowed more than once in a twelve (12) month period, except in force reduction."

Claimant requested free transportation for his household goods. The request was declined. He then had his goods crated and shipped by truck. He filed claim for the two items above listed.

The Carrier took the position in negotiations on the property, and does here, that had Claimant shipped via the carrier, it would have reimbursed the freight charges. The Carrier obviously could make this reimbursement only on the theory that it should have furnished free transportation. Accordingly, so far as this claim is concerned, we start with an admission that Claimant was entitled to free transportation under Rule 36 for his household goods. That is a contractual right. Ordinarily, one who is damaged as a result of a breach of contract is entitled to be made whole. The Claimant is entitled to recover the transportation cost which he was required to pay as a result of the Carrier not furnishing the free transportation, unless there is merit to Carrier's contention that he cannot do so because he shipped via truck. For the purpose of this claim, we accept the Carrier's contention that it is required to furnish free transportation only over its own lines. It refused to do so. The employe was not under contract to ship via the Carrier in that event. After the Carrier refused to perform its contract, the employe had the right to ship as he saw fit and to recover the reasonable cost of the transportation. It is not shown that the expense incurred was unreasonable. The Carrier should reimburse the Claimant for the \$28.07 transportation charge paid.

The Carrier, however, was under no contractual obligation to crate and prepare the goods for shipment. Claimant is not entitled to reimbursement of the \$16.44 crating expense.

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 Employes involved in this dispute are respectively carrier and employes 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 the Carrier should reimburse Claimant for the sum of \$28.07. It is not obligated to pay the sum of \$16.44.

AWARD

Claim sustained in part, and denied in part.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1947.