

Award No. 16965
Docket No. MW-17798

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CLINCHFIELD RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The discipline assessed against Section Foreman N. E. Chaffin, effective respectively on December 1, 1967 and on January 8, 1968, was without just and sufficient cause and on the basis of unproven charges.

(2) The appeals presented by General Chairman J. H. Bowen in his letters* of December 29, 1967 and January 29, 1968 should have been allowed as presented because Personnel Officer and Assistant to General Manager L. R. Beals failed to disallow said appeals in accordance with the time limits stipulated in Rule 35.

(3) Section Foreman N. E. Chaffin now "be restored to service, with full seniority, vacation, and all other rights unimpaired, and that all charges be stricken from his record and that he be paid for all time lost beginning December 4, 1967" because of the violations referred to in Parts (1) and (2) of this claim.

(*) These letters will be quoted within the Employees' Statement of Facts.

OPINION OF BOARD: This is a discipline case. The Claimant was awarded the position of Section Foreman at Kingsport, Tennessee, December 6, 1965. The following day, Carrier wrote Claimant that he must move to Kingsport from his residence in Johnson City, Tennessee, a distance of 24 miles.

Correspondence and discussions on the matter continued until, on November 13, 1967, Carrier vacated Claimant's Kingsport position. There followed protests, appeals and hearings on this claim and a second claim based on his dismissal January 29, 1968.

Claimant had served this Carrier for 27 years and since August 5, 1950, as a Section Foreman.

This case pivots on whether or not Carrier could require Claimant to reside at a specific location -- either at the headquarters, on the territory or nearby, as each is mentioned.

We find no such requirement. The record reveals that most Section Foremen live varying distances from their headquarters. The man who replaced Claimant at Kingsport resided 26 miles further from Kingsport than the Claimant.

The record shows that Claimant had "planned" to move to Kingsport, and that this intention to do so was expressed by the Organization to the Carrier. We do not, however, consider this to be a binding agreement.

This Board held, in Award 16095 (Engelstein):

"With reference to the contention that Mr. Henderson was not available, we find that the rules of the controlling Agreement do not require that the employe reside in the territory in which he works in order to be available."

Since we find on the First Claim that Carrier's action was discriminatory, we also find that Carrier's dismissal of Claimant in the Second Claim was excessive.

It is our judgment that Claimant Chaffin be reinstated to his position with all rights unimpaired, but without compensation for time lost.

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

The discipline imposed was excessive.

AWARD

The Claimant shall be reinstated with full seniority and vacation rights, but without back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1969.

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