Award No. 18281
Docket No. SG-18550

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company that:

(a) Carrier violated the Agreement for Protection of Employes in Event of Merger, Effective August 1, 1966, particularly Appendix F, when no notice whatsoever was given of contemplated changes involving consolidation of signal facilities on former Seaboard and Coast Line Railroads, and assigning maintenance of such facilities to signal maintainer at Albany, Georgia.

(b) Carrier be required to pay affected employes their moving expenses and allowances as spelled out in Appendix G of the so-called Orange Agreement, as outlined below:

1. T. W. Saville — Moving expenses from Albany, Georgia, to Ragland, Alabama, on July 23, 1968, $115.95, meals $10.00, transfer allowance $400.00, a total of $525.95.

2. G. C. Rowell — Moving expenses from Ragland, Alabama to Albany, Georgia, July 29–August 2, 1968, including 5 days' loss of time and transfer allowance, a total of $961.34.

3. C. L. Barnhill, Jr. — $400.00 transfer allowance and related moving expenses when move is made in conformity with controlling agreements.

4. D. F. Stevens — $400.00 transfer allowance and related moving expenses when move is made in conformity with controlling agreements.

(Carrier's File: 15–AA)

EMPLOYES' STATEMENT OF FACTS: On July 1, 1967, the Seaboard Air Line Railroad Company and Atlantic Coast Line Railroad Company were merged into one Carrier known as the Seaboard Coast Line Railroad Company. On August 1, 1966, an "Agreement for Protection of

Mr. Saville's part under the provisions of Rule 60 and not under provisions of the Orange Agreement, Mr. DePriest wrote him as outlined in his letter of June 19th, copy to you. You then, on June 22nd, emphasized to Mr. DePriest that the request was based on Rule 60, which was very clear and unambiguous, and requesting that the Albany position be advertised as requested by Mr. Saville without reservations. The Albany position was thereupon advertised. So it is very clear that the move was initiated voluntarily by request of Mr. Saville under the provisions of Rule 60 and as stated by you in your letter to Mr. DePriest of June 22nd, such rule is very clear and unambiguous. This was covered entirely by Rule 60, and neither the Orange Agreement nor any other agreement gave him the right to voluntarily move from his assignment.

The purpose of the Orange Agreement was to discourage unnecessary moves and transfers of employes by the Company to new points of employment which required them to move their residence and such agreement provided specific benefits and allowances to employes required by the Company to so transfer and move. This is clearly shown by the specific provisions underlined in Mr. DePriest's letter of November 11. Since the move by Mr. Saville was voluntary on his part under Rule 60, the protective provisions and benefits of the Orange Agreement could have no application. In your claim you specified that, 'Carrier be required to pay affected employes their moving expenses and allowances as spelled out in Appendix G of the so-called Orange Agreement, as outlined below.' Now, Appendix G very clearly confines such benefits and allowances stipulated to an employe required by the Merged Company to transfer to a new point of employment requiring him to move his residence. As stated, none of the claimants was required by the Company to transfer to a new point of employment requiring him to move his residence.

Therefore, there is no merit to the claim, and it is declined."

(Exhibits not reproduced.)

OPINION OF BOARD: The claim alleges a violation of the Agreement for Protection of Employes in Event of Merger, Effective August 1, 1966, particularly Appendix F thereof, and demands payment to certain named employes of their moving expenses and allowances under Appendix G.

The Agreement alleged to have been violated, referred to by the parties as the "Orange Agreement", has been made a part of the record. Our attention has been directed to Section 4 of that Agreement which provides the machinery for the settlement of any dispute or controversy with respect to the interpretation or application of that Agreement or of any implementing agreement entered into pursuant thereto.

As the Petitioner alleges a violation of the "Orange Agreement" and Appendices thereto, the proper forum for the adjudication of such dispute is as provided in Section 4 of that Agreement. See Awards 18028, 17639, 17625, 17099, 17098, 17054, 16924, 16869, 16037, 15696, 14979, 14471, among others. We will, therefore, dismiss the claim without prejudice.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 claim should be dismissed.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1970.

DISSENT TO AWARD 18281, DOCKET SG-18550

Award 18281 is in error. The Award states that the "Orange Agreement provides "the machinery" for the settlement of any dispute or controversy with respect to its interpretation or application. The reference is to a provision that "* * * such disputes may be referred by either party to an arbitration committee * * *." The effect of the award is that the parties have agreed that such disputes must be so referred to be determined. We disagree for several reasons.

In the first place, the language of the Agreement is clearly permissive, and the Award's interpretation is mandatory and in contradiction to our Award 18071 and others.

Next, while the Award holds that the parties to the Agreement have confined themselves to private arbitration, it is quite apparent that such was not the intent and understanding of the Employes; had it been, they certainly would not have brought the dispute before us. Neither can it be said to have been the intent of the only Carrier party to the Agreement. The Carrier did not at any time object to the forum chosen by the Employes; instead, it presented its position by discussing other agreement provisions and urging that our award support that position. The issue accepted as controlling by Award 18281 was raised for the first and only time by the Carrier Member of this Board.

Award 18281 holds that the parties' Agreement means that which the parties did not intend. For the foregoing reasons, Award 18281 is in error.

W. W. Altus, Jr.
Labor Member

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