NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19901

THIRD DIVISION Docket Number CL-19857

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, (Freight Handlers, Express and Station Employes
(J. F. Nash and R. C. Haldeman, Trustees of the Property of (Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7121) that:

(a) Carrier violated the Agreement between the parties effective May 1, 1955, as revised, when it abolished all clerical positions (Group #1) at Manchester, New York, and turned this work over to the Yardmasters and others excepted from the Agreement and permitted these Employes to perform and/or absorb the duties and/or work of positions coning under said Agreement, and

(b) Due to this violation on the part of the Carrier various Employes were furloughed on account of no more clerical positions (Croup #1) available at Manchester, N.Y., and

(c) Due to this violation on the part of the Carrier, Mrs. Mary B. Warner,, made a displacement on position in Buffalo, New York, in the same seniority district over one hundred (100) miles and,

(d) Under Rule 62(b) Mrs. Mary B. Warner requested reimbursement for moving expenses totaling two hundred (200) dollars, and

(e) Carrier shall now be required to reimburse Mrs. Mary B. Warner the sum of two hundred (200) dollars for moving expenses.

OPINION OF BOARD: Claim "(a)" alleges a violation of the "Scope" Rule of the Agreement. That Claim has been fully considered by this Board (Award 19833) and for the reasons stated therein, the Claim is dismissed.

Claim "(b)" specifies that a number of employees were furloughed "... on account of no more clerical positions (Group #1) available at Manchester, N.Y. . .."

Although Claim "(b)" is dismissed because it refers to a "violation" by the act of abolishing positions, it appears obvious (from a consideration of Awards dealing with the July 1, 1970 action of the Carrier) that a number of employees were, in fact, furloughed at Manchester, N.Y. (see Awards 19833: 19834: 19835).

Regarding Claim "(c)", the record, in its entirety, establishes that `laimant made a displacement in Buffalo, N.Y., in the same seniority district as anchester, N.Y. and that the distance involved is approximately 100 miles. However, Claim "(c)" is dismissed because it refers to a "violation" by the act of abolishing positions.

The basic issue here ("(d)" and "(e)") deals with the Claimant's request for reimbursement for moving expenses totaling $200.00, under Rule 62(b) of the Agreement which states:

> "Employees exercising seniority rights to new positions or vacancies which necessitate a change of residence will receive free transportation for themselves, dependent members of their families, and household goods, on the lines of the Lehigh Valley 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-month period...."

On August 24, 1970, Claimant advised Carrier that she had been awarded a position in Buffalo, New York and stated:

> "I am entitled to expenses and/or cost of moving my household goods from Manchester, N.Y. to Buffalo, N.Y. under Rule 62."

In response to that notification, the Carrier stated:

> "I do not concur with you that the rule cited supports your demand in this instance and it is therefore denied as without merit."

Further, the Carrier stated that if there was merit to the demand made, Claimant failed to support it with an itemized list of expenses incurred.

On January 12, 1971, the Carrier denied Claimant's Appeal, "... for the same reasons as stated...under date of October 6, 1970."

In March of 1971 the matter was appealed to the Director of Labor Relations. He replied that the claim was "too vague and indefinite" and that the claim contained no dates nor amounts of claims nor any evidence to substantiate an existing claim. Further, the Carrier noted that the Claimant exercised seniority within a Seniority District which was necessary for any employee, if they desire to continue to be employed. Carrier stated that Rule 62 was not and is not intended nor interpreted to cover situations where employees exercise their seniority within the same District.

A number of months later, the Organization submitted to the Carrier a March 29, 1971 receipt, written in longhand, for $200.00 for moving household goods from Manchester, New York to West Seneca, New York. The receipt does not identify the recipient as a mover, nor does it contain any breakdown of the charge.

The Board is unable to find support in the Agreement for Carrier's assertion that Rule 62(b) does not apply to moves within the same Seniority District.

Rule 62(b) appears to support the Claimant's request. She was an employee who exercised a seniority right to a new position or vacancy. The position or vacancy was approximately 100 miles from her previous place of residence. It is not unreasonable to believe that such an exercise of seniority would "necessitate a change of residence." Certainly, the Carrier could have raised factual issues concerning the necessity to change residence, but it chose not to do so. Under the circumstances, the Board is of the view that the Claimant's assertion in August of 1970 that she was entitled to the benefits of Rule 62(b) placed that item in issue; but nothing in Rule 62(b) suggests that a "change in Seniority District" is vital to the operation of the Rule. Rather, as stated, the test appears to be the necessity for change of residence.

After the matter was handled on the property, the Organization suggested, in its Ex Parte Submission to this Board, that the portion of the rule which states that transportation of household goods ". ..on the lines of the Lehigh Valley..." has been ignored for years and that the moving of household goods has been performed by a moving van rather than on the lines of the Carrier, as a matter of economics.

The Carrier disputes thae assertion in its reply to the Employees' Ex Parts Submission.

While it may be that movement of household goods by van is less expensive an utilization of Carrier's equipment, this Board may not rewrite or reform the Agreement. The matter of substitution for Carrier's equipment was not raised and/or considered on the property and consequently the Board must disregard it at this time. Thus, for purposes of this case, only the language of the agreement is before us.

In any event, the Board is of the view that the Claimant took appropriate steps to comply with the Rule. The Claimant did not contract with an outside source and then submit the bill to the Carrier. On August 24, 1970, she made her declaratory statement that she was ". ..entitled to expenses and/or cost of moving my household goods from Manchester, New York to Buffalo, New York under Rule 62." That declaratory statement appears to be sufficient to place the Carrier on notice that the Claimant desired movement of household goods on the lines of the Lehigh Valley. Instead of furthering that matter, the Carrier stated that the rule did not support her demand and it was denied as without merit. Thus, the issue is framed as to what, if any, self-assistance the Claimant could then employ under the circumstances.

The Board has considered Award #14337 (Perelson). In that dispute, a Carrier was obligated to move household effects for an employee, but did not do so. Because of that failure on the part of the Carrier, the Board held that the Claimant therein had the right to transport or ship household effects as he saw fit and to recover reasonable costs, thereof. The rationale of that Award appears sound, and seems to apply to Claimant in this dispute. Thus, within a reasonable period of time after Carrier's refusal to comply with the request (noting that Rule 62 es not contain a time limitation in which the move must be made), the Claimant may incur moving costs.

Upon a showing of reasonable cost expenditure, the Carrier should reimburse the Claimant.

In this instance, the Board is reluctant to grant Claimant's request for $200.00 for moving household goods based on the rather sketchy receipt in the record. However, the Board is of the view that Claimant can receive reimbursement for the move of household goods up to $200.00 if she can adequately demonstrate, with more specific detail, the costs expended and show time of move, basis for charges, etc. Accordingly, the matter will be remanded to the parties to resolve the question of the specific amount due to Claimant for movement of household goods, consistent with the Opinion of this Board.

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 Agreement was violated.

A W A R D

Claim (a), (b) and (c) are dismissed for the reasons set forth in the Opinion.

Claim (d) and (e) are remanded to the parties as set forth in the last paragraph of the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulin
Executive Secretary

Dated at Chicago, Illinois, this 8th day of August 1973.

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By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 8th day of August 1973.