

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21545
Docket Number SG-21069

Frederick R. **Blackwell**, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(**Chesapeake and Ohio Railway Company**
(Chesapeake District)

STATEMENT OF CLAIM: "Claim of the System **Committee** of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway **Company** (Chesapeake District) that:

(a) Carrier is in violation of the Signalman's Agreement, particularly Article VIII of the November **16, 1971** National Agreement, when it **re-** refused to grant to Claimants named below, transfer allowance of **\$400.00** each, plus reimbursement for **all** expenses of moving his household **and** other personal effects (bills will be submitted later) and up to five (5) days off in order to move,

(b) **Claimant** Terry E. Donnal., C&O ID No. 2605829, be **allowed** the above referred to benefits when he moved his residence from his area of former employment at Delaware, Ohio to **area** of new employment **after** March 1, **1973** at Fostoria, Ohio, a distance of approximately 70 miles; and,

(c) Claimant Larry A. Jodouin, C&O ID No. **2606917**, be allowed the benefits referred to in part (a) when his residence was moved **from** area of former employment at **Walbridge**, Ohio to **area** of new employment **after** March 1, 1973 at Fostoria, Ohio, a distance of approximately **31.5 miles.**" (General **Chairman File: 73-57-216**. Carrier **file: SG-357**)

OPINION OF BOARD: The **claims** of T. E. Donnal **and** L. A. Jodouin arise in connection with the Carrier's February **16, 1973** abolishment of **all signal** maintainer positions on the **Hockings** Division and **advertising** new ones. Claimant Donnal subsequent to such abolishment, bid in a Signal Maintainer position at Fostoria, Ohio, which is about 70 miles **from** his former reporting point at Delaware, Ohio. **He** moved his residence from Delaware to Fostoria. Claimant Jodouin bid in a position of Assistant Signal Maintainer at Walbridge, Ohio; the position had been advertised on February 9, 1973 and was awarded to Mr. Jodouin on February 23, 1973. **He** worked this position until displaced on March **5, 1973**, at which time he bid in a **vacant** Assistant Signal **Maintainer** position at Fostoria. He moved his residence from Toledo to Perrysburg, Ohio.

These changes of residence, according to the Organization, entitle the **Claimants** to the benefits of **Article VIII** of the **Signalmen's National Agreement** of November 16, 1971. The **Carrier** concedes that its February 16 action was **an operational change** within the purview of **Article VII**; however, the **Carrier** asserts that the facts do not bring the **Claimants** within the **Article**. As regards **Claimant Donnal**, the **Carrier** says that he could have taken **an Assistant Maintainer** position at Delaware; that he voluntarily bid to the **Signal Maintainer** position at Fostoria; **and** that, therefore, he was not required to **transfer** to a new point as a result of the operational change. As regards **Claimant Jodouin**, the **Carrier** says that he did not **take** the **vacancy** at Fostoria until **after** he had acquired **and** worked a position at the original **headquarters** (Delaware) for five **days**, **and** that these **circumstances** do not establish that his transfer to Fostoria was caused by the **operational** change.

The text of **Article VIII** of the 1971 **National Agreement** reads as follows:

"ARTICLE VIII - CHANGES OF RESIDENCE DUE TO TECHNOLOGICAL, OPERATIONAL OR ORGANIZATIONAL CHANGES

When a carrier makes a technological, operational; **or** **organizational** change **requiring** an employee to transfer to a new point of employment requiring him to move his residence, such transfer and **change** of residence shall be subject to the benefits contained in Sections 10 and **11** of the Washington Job Protection Agreement, notwithstanding anything to the contrary contained in said provisions, except that the employee **shall** be granted **5 working days** **instead of 'two working days'** **provided** in Section 10 **(a)** of said Agreement; **and** in addition to such benefits the employee shall receive a transfer **allowance** of **\$400**. Under this provision, **change** of residence shall not be considered 'required' if the reporting point to which the employee is changed is not more **than** 30 miles from his former reporting point.'!

Although **Claimant Donnal** could **have** avoided the **move** to Fostoria had he been **willing** to forego the **Signal Maintainer** position at that point **and** take an **Assistant Maintainer** position at Delaware, this result would have **occurred only if the** **Claimant** had **refrained** from exercising his seniority rights to enjoy the higher rated position at Fostoria. Nothing in **Article VIII**, or in the whole record, suggests that an **Employee** is required to so restrict his seniority rights in order to save the **Carrier** from providing the benefits prescribed in **that** **Article**. The **Carrier** has cited no **authority** which

imposes such a restriction on an employee, and it is therefore concluded that **Claimant Donnal** was required to move his residence because of the operational change. **Claimant Jodouin's** situation is different. He worked at the original point for five days after the operations³ change took effect, so the change **had** occurred before his move to the position at **Fostoria**. Accordingly, his change of residence cannot be attributed to the operational change.

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 **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 the Agreement was violated.

A W A R D

Claim sustained in respect to T. E. **Donnal** and otherwise denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at **Chicago**, Illinois, this **31st** day of **May 1977**.