

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25083  
Docket Number MS-24906

George V. Boyle, Referee

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DUP  
PARTIES TO DISPUTE: (L. H. Means  
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(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an **ex parte** submission on Dec. 1, 1982 covering an unadjusted dispute between me and the Santa Fe Railway Company involving the reimbursement of the sale of my residence under conditions of the Washington Job Protection Agreement."

OPINION OF BOARD: The Claimant was a Record File Clerk who accepted a transfer position at Topeka, Kansas and who subsequently reclaimed his previous position at Buffalo, Oklahoma.

In the process of these moves he was required to change his residence and invoked the provision of the Washington Job Protection Agreement, Section 11 which reads, in part:

- "1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party."

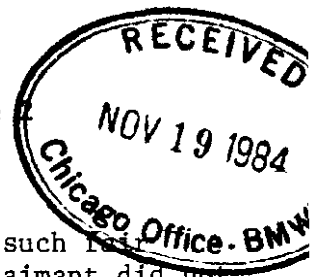
However, the evaluation of the property became a matter of dispute since the claimant had bought the building in an unfinished state from the Great American Nursing Home Development and Investment Company, Inc. in June 1969, and had used only a portion of it as living quarters. Further a series of appraisals by different agencies produced widely divergent amounts cited.

While the matter was still in dispute the Claimant found a buyer and disposed of the property. At that time the Carrier agreed to reimburse the Claimant for the expenses involved in selling that portion of his property which had been used as living quarters. This was unsatisfactory to the Claimant and the matter was brought to this Board.

However a number of points make this claim inappropriate for adjudication in the Claimants favor:

- 1) The Claimant nowhere in his submission specifies what remedy he desires. Consequently the Board cannot create an award, that would be beyond the purview of this Board.

- 2) The Claimant himself did not comply with the provisions of the Agreement which he invokes. The Agreement provides that, "The employing carrier shall



in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party." The Claimant did not afford the Carrier such opportunity. He cannot be selective in the provisions with which he will comply and then claim retroactive judgment against the Carrier.

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 claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A handwritten signature in cursive script, appearing to read "Nancy S. Dever".

Nancy/S Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.