

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Larry Donaldson
PARTIES TO DISPUTE: (
(Burlington Northern Railroad 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 Ex-Parte Submission within thirty (30) days covering an unadjusted dispute between me (Larry Donaldson) and the Northern Burlington Railroad involving the question whether claimant is entitled to recover for loss from the sale of real estate following transfer from Galesburg to Hannibal under §11 of the Washington Job Protection Agreement."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant was employed by the Carrier as a wire chief.

The dispute in this case involves the Carrier's refusal to pay the Claimant the difference between the fair market value of his home (\$35,000) and the actual sales price (\$28,000) after the Claimant was transferred from Galesburg, Illinois, to Hannibal, Missouri, on July 25, 1983. The Carrier informed the Claimant that he would be protected under the Washington Job Protection Agreement. The Claimant encountered difficulties in selling his home and, on numerous occasions, requested that the Carrier purchase it. The Carrier, on several occasions, refused to purchase his home, but indicated that it would reimburse the Claimant for any loss suffered in the sale of his home for less than its fair market value in accordance with Section 11(A) of the Washington Protection Agreement. Eventually the property, because it was subject to a mortgage, was foreclosed upon on April 21, 1987.

The Claimant thereafter filed a claim to recover his losses, including foreclosure costs in the amount of \$5,139 and the difference in the fair market value of the home and its foreclosure price, which is \$7,000. The Carrier denied the claim on the grounds that it was not timely filed within the three-year limit under the Agreement and that the home was never actually sold, but foreclosed upon and the Claimant cannot claim a loss on the foreclosure.

The parties being unable to resolve their differences, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the case must be dismissed because the Claimant failed to timely file his Claim for loss.

Section 11(A) of the Washington Job Protection Agreement states as follows:

"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."

It is important to note that Section 11(A) does not require the Carrier to purchase the employee's home.

Section 11(C) of that same Agreement states as follows:

"No claim for loss shall be paid under the provisions of this Section which is not presented within three years after the effective date of the coordination."

The record reveals that the coordination in this case took place in July 1983, when the Claimant was transferred from Galesburg to Hannibal. The three-year period in which the Claimant could file his claim relating to his home expired on July 25, 1986. In August 1986, the Claimant forwarded a \$20,000 offer to the Carrier and it was rejected in September 1986. The foreclosure took place in March and April 1987. The foreclosure sale occurred in July 1987.

From the facts above, it is clear that the Claimant's home was not sold within the three-year time period and any claim submitted more than three years after July 25, 1983, must be barred pursuant to the clear terms of the Agreement.

This Board further finds that the Claimant's requests for the Carrier to purchase his home cannot be considered to be claims for loss or a claim. There is no requirement in the Agreement that the Carrier purchase the Claimant's home.

In addition, the record reveals that after the Carrier refused to either purchase the Claimant's home or make the Claimant whole in 1986, the Claimant failed to appeal the Carrier's action by means of a grievance within sixty days. Therefore, the claim is time barred.

Finally, there is no evidence that the Claimant sold his home. There is no proof that the house was sold for less than the fair market value.

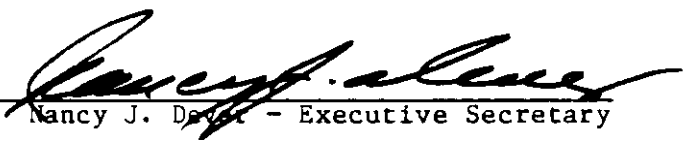
For all of the above reasons, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.