

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29910
Docket No. SG-29767
93-3-91-3-118

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former C&O-
(Chesapeake District)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSXT, Inc. (C&O):

Statement of Claim:

- (a) Carrier violated the parties Schedule Agreement as amended, particularly Change of Residence Expense Rule 40, when Claimant was denied the benefits spelled out in Rule 40 as a result of him being required to move his residence approximately 85 miles from Newark, Ohio to Tiffin, Ohio on or about September 5, 1989 as a result of an operational /organizational change.
- (b) As a consequence of the above violation Carrier should now be required to allow Claimant Edward B. Quick, Jr., CSXT ID 620734 the benefits spelled out in paragraph (a) of Rule 40 of \$400.00 transfer allowance and pay for five (5) days at his former signalman's rate of pay of \$14.13 per hour or a grand total of \$965.20." Gen'l. Chmn's. File No. 89-26-CD. Carrier's File No. 15 (90-3). BRS Case No. 8355-CSXT.C&O.

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 employe 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 instant claim seeks transfer allowance benefits under Rule 40 on the basis that Claimant was required to change his place of residence as a result of an operational/organizational change. Prior to Claimant allegedly relocating his residence from Newark, Ohio, to Tiffin, Ohio, he was working as a Signaller in Floating System Gang 7XA3. Two positions in the gang were abolished effective September 1, 1989. Claimant, being affected by the abolishments, elected to exercise his seniority on an Independent Signal Maintainer's Position, Force 7GB3, headquartered at Fostoria, Ohio. At that time Carrier had in place a regulation which required Signalmen to reside within one hour of any potential trouble calls within their assigned territory. The Organization contends that this regulation published June 20, 1989, constituted an operational/organizational change which would trigger the transfer benefit provisions of Rule 40. Carrier, claims that the regulation, by itself, would not constitute an organizational or operational change as employees were always expected to live close by so that they could respond to calls. Further, it stresses that job abolishments caused by lack of work, such as the one Claimant was affected by, do not meet the test of an organizational or operational change, so as to trigger entitlement for benefits under Rule 40.

It is the Organization's responsibility to initially demonstrate that Claimant was affected by an organizational or operational change of the type that would trigger entitlement of relocation benefits under Rule 40. This responsibility has not been satisfied in this record. The Organization has bottomed its claim principally on the argument that Carrier's June 20, 1989 letter constituted such a change, ergo, every time an employee relocates he is entitled to the benefits of Rule 40. The Board is unwilling to accept this as appropriate, in light of the fact, that it has long been held, by scores of awards, that job abolishments resulting from a lack of work are not, per se, considered as job abolishments resulting from an organizational or operational change. In this regard see Award 17, PLB 3402, holding:

"We are persuaded that no 'organizational or operational change' was made by Carrier which required Claimant Sorenson to transfer. A host of pertinent awards holds that reduction of workforce due to decreased workloads is not an 'organizational or operational change' within the meaning of those terms in Article

XII. Among the more trenchant of those decisions was SBA 605-167 in which Referee Milton Friedman held as follows:

'The basic question is whether a force reduction is a technological, operational or organizational change entitling an employee, whose position is consequently abolished, to moving expenses when he displaces a junior employee at a distant location.

The import of the Employees' argument is that whenever there is any force reduction the organizational structure has changed and, under Item 2 on page 11 of the interpretations of November 24, 1965, moving expenses are payable. Carrier contends that "bona fide labor cutbacks necessitated by immediate or anticipated decreased work loads" do not come within the definition of operational, organizational and technological changes.

If "operational" or "organizational" changes were intended to cover something as frequent and ordinary as a reduction in force, there are few changes to which such an expansive definition would not apply. Virtually every action initiated by Carrier affecting personnel could be so described. In fact, instead of using such general terms as "operational" and "organizational," the February 7 Agreement and the Interpretations would have done better to list the rare exceptions.

Without attempting to specify limits within which changes can be construed as "operational" or "organizational", it is apparent that an ordinary reduction of forces due to a fluctuation of business does not fit the definition."

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Not having demonstrated that Claimant was affected by anything more than an ordinary reduction of forces due to a fluctuation of business it has not been established that the transfer benefits of Rule 40 are appropriate. The Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 9th day of November 1993.