

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31443
Docket No. SG-31451
96-3-93-3-400

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company (CNW):

Claim on behalf of D.J. Harp for payment of transfer benefits, including expenses incurred in the relocation of his residence, account Carrier violated the current Signalmen's Agreement, particularly Appendix 'F', when it refused to provide the Claimant with the required transfer benefits when it moved the Claimant's headquarters. Carrier's File No. 79-93-5. General Chairman's File No. S-AV-126. BRS File Case No. 9150-CNW."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee 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 basic facts upon which this claim is based are not in dispute. Prior to August 12, 1992, Claimant was assigned as a District Signal Foreman with headquarters at Chadron, Nebraska. By a Special Notice dated August 12, 1992, Carrier changed the headquarters locations of 18 Signal Department positions. The headquarters of Claimant's position was one of the 18 positions included in the Special Notice and was changed from Chadron, Nebraska, to Lusk, Wyoming, a distance of 78 miles. The Special Notice indicated thereon that:

"The following positions will have a Rule 17 Displacement coming due to changes in headquarters."

Claimant elected to exercise his displacement rights to a District Signal Foreman position at Mason City, Iowa. He thereupon relocated his residence to the Mason City headquarters point. This claim involves his request for relocation expenses as provided for in Appendix "F" of the Agreement.

Appendix "F" reads as follows:

"CHANGE OF RESIDENCE

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 \$800. 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. (As amended by Agreement dated June 4, 1991.)"

Carrier's position in its denial of the requested reimbursement is that Claimant was not "required" to relocate to Mason City, but rather he "chose" to make that move rather than to follow his position from Chadron to Lusk. Carrier further contends that the change of headquarters from Chadron to Lusk was not a "technological, operational or organizational change" as that term is used in Appendix "F." Carrier insists that "the decision to change Claimant's headquarters from Chadron to Lusk, Wyoming, was merely a business decision based on Claimant's primary work location on the Coal Line."

The Organization acknowledges that Carrier has the fundamental right to change the headquarters of any position which it chooses, but when such a change requires the relocation of the employee's reporting point more than 30 miles, then the provisions of Appendix "F" become applicable. In this instance, it argues that the

relocation to Mason City rather than to Lusk does not negate the fact that a change of more than 30 miles was required of the Claimant. It insists that "Claimant was left with no option in this situation; he had to relocate."

The Board's review of the fact situation in this case when considered in the context of the Agreement provisions leads to the conclusion that the Organization's position in this instance is more persuasive. This conclusion finds support in several prior arbitral decisions on this issue including Third Division Award 30745 which involved the same parties as are involved here. In that Award, the Board held as follows:

"As in most such cases, the determining factor is whether Claimant's change of residence was proximately caused by a 'technological, operational or organizational change' within the meaning of that quoted term in Appendix F. Consideration of the plain language of Appendix F persuades a majority of the Board that the change of more than 100 miles in Claimant's headquarters required him to transfer to a new point of employment requiring him to move his residence. The simultaneous abolishment of 31 positions and a 100 mile change in headquarter points is clear evidence of a rearrangement of forces representing a fundamental reorganization by Carrier. Arbitral precedent from similar disputes clearly indicates that departmental rearrangements of this type and magnitude are considered organizational changes covered by Appendix F of the Agreement. See Public Law Board No. 3402, Award 20, Special Board of Adjustment No. 606, Award 132, and Third Division Award 21189. Claimant was not required to displace to a lower-rated job at the old headquarters to relieve Carrier of its Appendix F obligation and his subsequent exercise of seniority and transfer of residence to obtain a like position at Missouri Valley was directly causally linked to the transfer of headquarters to Cedar Rapids, i.e., it would not have occurred but for that change of his original headquarters."

And again in Third Division Award 28390 it was held that:

"There is no question that the reorganization of territories by Carrier on February 5, 1982 was an 'operational change' within the established meaning of that term in the industry. SBA 605, Award 235. Nor can there be any doubt in objective minds that the operational change was the proximate cause of the invocation of Rule 65 rebulletining which led directly to

and, in a practical sense, 'required' Claimant's change of residence from Lapeer to Lansing. In our judgment it would be contrary to the letter and intent of the Agreement language to allow Carrier to bootstrap its position in this Claim on the sophistic theory that Rule 65 rebulletining was a separate and independent cause of Claimant's change of residence. See SBA 605, Award 165."

And still again in Award 1 of Public Law Board No. 2183 we read:

"As we read the language, therefore, the only question remaining is whether Claimant's move to Stockton was caused by the transfer of his former reporting point from Sacramento to Greenville. Of course, had Claimant moved to Greenville this would have been a simple and more straightforward case, virtually on all fours with Award No. 132 of Special Board of Adjustment No. 605. On the facts of record before us, however, we are still persuaded that but for the organizational change which transferred his former position to Greenville Claimant would not have moved to the Stockton position. For that reason we conclude that his move to Stockton in order to retain a STF position was 'required' by the organizational change."

A similar conclusion is inescapable in this case. But for the change of headquarters from Chadron to Lusk, which change was an organizational change, Claimant would not have been entitled to move to the Mason City position. He was "required" to make a move because of the organizational change. The provisions of Appendix "F" are applicable to that required relocation. Accordingly, the claim of the Organization is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of April 1996.