

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33839

Docket No. MS-33388

99-3-96-3-906

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(D. L. Bohanon

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

“Claim of Clerk D. L. Bohanon for payment of relocation benefits of the October 27, 1992 Implementing Agreement as follows:

For mileage relocated (147 miles)	\$4,000.00*
Transfer allowance	\$1,000.00*
In lieu of home sale benefits, lump sum based on fair market value of home (fair market value of Claimant’s home \$69,700.00	<u>\$15,000.00*</u>
	Total \$20,000.00

***Source: Attachment A, October 27, 1992 Implementing Agreement.**

Appeal for payment because Carrier denied benefits Claimant is entitled to receive for relocation from Belt Junction Tower, Dallas, Texas to Hearne, Texas in March 1993.”

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 and 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 were given due notice of hearing thereon.

On January 21, 1993, effective February 1, 1993, and under authority of a New York Dock Implementing Agreement dated October 27, 1992 (Global Agreement), the yard office computer reporting function at Corsicana, Texas, was transferred to Field Data Reporting in Houston. As a result, certain clerical positions were abolished at Corsicana.

In February 1993, Claimant was a Telegrapher Clerk at Belt Junction. As a result of bumps flowing from the abolition of jobs at Corsicana, Claimant was displaced from Belt Junction. On March 13, 1993, Claimant, in turn, displaced to Hearne, Texas. Because Claimant's displacement flowed from the abolition of jobs at Corsicana, Claimant was given protected status under New York Dock and was given a test period average.

In a separate trackage rights transaction of April 26, 1994 between the Carrier and the Union Pacific, an Implementing Agreement resulted which closed the Belt Junction Tower and transferred work from the Carrier to the Union Pacific (Missouri Pacific). Protective conditions were also imposed. The Union Pacific shifted the work to Omaha impacting five employees from Belt Junction who were unable to follow the work to the Union Pacific. Those five employees were allowed enhanced relocation and real estate benefits under the October 27, 1992 Global Agreement.

Here, Claimant asserts that like the five employees from Belt Junction Tower affected by the 1994 transaction, because he worked at Belt Junction Tower, he also should have received enhanced relocation and real estate benefits.

First, in passing, we note in agreement with the Carrier that this is a dispute arising under New York Dock and this Board does not have jurisdiction to consider the matter.

Second, but jurisdictional concerns aside, on the merits, the claim must be denied.

There are two Agreements involved in this case. The October 27, 1992 Global Agreement and the April 26, 1994 Trackage Agreement. Five locations were specified in the Global Agreement for rearrangement and consolidations of work — Denver, Houston, Monterey Park, Roseville, and San Francisco. Employees transferring under the terms of the Global Agreement to those specific locations were given specified allowances. Global Agreement at Articles II, III and Appendix A. Claimant did not displace to one of those locations. Instead, Claimant displaced to Hearne, Texas. When the April 26, 1994 Trackage Agreement came into effect which impacted employees at Belt Junction, Claimant was not an affected employee by that Agreement. Claimant had previously displaced out of Belt Junction. As a result of the earlier displacement, Claimant received certain protective benefits. Given that Claimant opted to displace to Hearne (which was not one of the designated five locations in the October 27, 1992 Global Agreement) and given that he was no longer at Belt Junction when the April 26, 1994 Agreement came into effect, Claimant was not entitled to more protective benefits than those previously given. Benefits given to other employees (which were greater than Claimant's) were consistent with their locations and the terms of the relevant Implementing Agreements.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of December 1999.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 33839

DOCKET NO. MS-33388

NAME OF PETITIONER: (D. L. Bohnanon

NAME OF CARRIER: (Southern Pacific Transportation Company

Upon application of the Claimant involved in the above Award, that the Board interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

After noting that the Board does not have jurisdiction to consider disputes under New York Dock, in denying the merits of the Claimant's assertion that he was entitled to relocation and real estate benefits, the Board found in Award 33839:

“... As a result of the earlier displacement, Claimant received certain protective benefits. Given that Claimant opted to displace to Hearne (which was not one of the designated five locations in the October 27, 1992 Global Agreement) and given that he was no longer at Belt Junction when the April 26, 1994 Agreement came into effect, Claimant was not entitled to more protective benefits than those previously given. Benefits given to other employees (which were greater than Claimant's) were consistent with their locations and the terms of the relevant implementing agreements.”

Focusing upon our finding that “... Claimant was not entitled to more protective benefits than those previously given,” the Claimant now asserts that “... no protective benefits were ‘received’ or benefits ‘previously given’ as stated in Award No. 33839, and the Carrier refuses to pay the benefits to which I am entitled . . .”

The Claimant's assertion that he did not actually receive other benefits "previously given" is a new claim which was not previously before the Board when we decided Award 33839. As specified in his claim, the question the Board decided in Award 33839 was whether the Claimant was entitled to \$20,000.00 in relocation and real estate benefits under the October 27, 1992 Global Agreement. We found he was not. The Claimant's present assertion that he did not actually receive the other benefits was not an issue raised by the claim. See Third Division Award 18804, Interpretation No. 1, Serial No. 257:

"The request for an interpretation is in substance an attempt to develop a new and additional claim before this Board. We can assume no jurisdiction over controversies between the parties that have not been processed to this Board in accordance with the applicable provisions of the Railway Labor Act. . . ."

The request for Interpretation is therefore dismissed.

Referee Edwin H. Benn who sat with the Division as a neutral member when Award 33839 was adopted, also participated with the Division in making this Interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 28th day of October 2002.