

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40420
Docket No. SG-39676
10-3-NRAB-00003-060495
(06-3-495)

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of J. C. Carter, for \$1530.57 in moving expenses, \$800.00 moving allowance and five days' pay for moving, account Carrier violated the current Signalmen's Agreement, particularly Rule 80 and the Change of Residence Article VIII, November 16, 1971 Agreement – Changes of Residence due to Technological, Operational or Organizational Changes, Q-1-91 of the current Agreement, when it abolished the Claimant's position on October 12, 2004, on Signal Gang 8252 with headquarters at Calienti, Nevada, and then established a new Zone Gang (8253) with the exact same number of positions causing the Claimant to have to relocate from Calienti, Nevada to Nephi, Utah on or about July 4, 2005. Carrier's File No. 1431764. General Chairman's File No. UPGCW-41-1149. BRS File Case No. 13657-UP.”

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.

This case stems from the Claimant's request for reimbursement of moving expenses incurred when he displaced from Caliente, Nevada, to an assignment in Nephi, Utah. The record reflects that he had been assigned to a Western District gang with a fixed headquarters at Caliente. When the Carrier no longer had work for that gang, it was discontinued. As events unfolded, at the same time there was another Signal Gang (a Zone Gang) being established for assignment on a separate roster with headquarters provided as "on-line." In essence, it was intended that the members of the new gang were to receive expense allowances.

These two gangs were not on the same seniority roster and were not performing identical work. When the Claimant was unable to obtain a position on the newly created Zone Gang, the Organization attempted to pair the gangs and to forge a position that the Claimant was entitled to moving allowances in accordance with Rule 80 and Change of Residence Article VIII of the Agreement. The Carrier contended that the Claimant was not entitled to moving allowances and denied the request.

Rule 80 provides as follows:

"Rule 80 – Loss of Earnings: An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss."

Article VIII provides as follows:

"Article VIII – Changes of Residence Due to Technological, Operational or Organizational Changes: When a carrier makes a technological, operational or organizational change 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 recited in Third Division Award 34969:

"The abolishment of a position by itself does not invoke the protections [of Article VIII]. . . . [T]he action in this case involved a job abolishment, not an operational or organizational change. The claim shall be denied."

The record offers no support for the proposition that the Carrier here abolished a headquartered gang and established an on-line gang to perform the same function. Whereas the gang to which the Claimant was formerly attached could only work on the seniority territory of the Western Seniority District, the newly established gang could work on the larger territory including the Western Seniority District, the Oregon Seniority District, the Nevada Seniority District and the Portland Seniority District. Thus this was not a case of abolishing the Western Seniority District Gang and establishing it elsewhere on the Western Seniority District.

Additionally, because the initial gang's reduced workforce was due to decreased workloads it was not an 'organizational or operational change.' Thus the Organization failed to demonstrate that the Claimant was affected by an organizational or operational change of the type that would trigger entitlement of relocation benefits.

As stated in Third Division Award 29910:

"It is the Organization's responsibility to . . . demonstrate that Claimant was affected by an organizational or operational change of the type that would trigger entitlement of relocation benefits[.]. . . The Organization has bottomed its claim principally on the argument that Carrier's . . . letter constituted such a change, ergo, every time an employee relocates he is entitled to the benefits of [the] Rule[.] 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 . . . to transfer. A host of pertinent awards hold that reduction of workforce due to decreased workloads is not an 'organizational or operational change' within the meaning of those terms. . . ."

In conclusion, the Organization failed to meet its burden of establishing any Agreement violation. The Board finds that the Claimant did not suffer loss of earnings because of a violation or misapplication of any portion of the Agreement.

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 14th day of May 2010.