

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO & EASTERN RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood.

(1) That the Carrier erred when it did not permit Section Foreman C. J. Thomas to work as Foreman on Section 6, Crete, Illinois, which position was awarded him on Bulletin Number 605, dated May 13, 1947;

(2) That Section Foreman C. J. Thomas be permitted to work as Foreman on Section 6, Crete, Illinois.

EMPLOYEES' STATEMENT OF FACTS: Under date of April 28, 1947, bulletin advertising vacancy for Section Foreman, Headquarters, Section 6, Crete, Illinois was issued as follows:

"Bulletin No. 605—Permanent Foreman, Section 6, Crete, Illinois
Rate—\$213.46 per month."

Under date of May 13, 1947 this position was awarded to Section Foreman C. J. Thomas, the senior foreman making application, but Mr. Thomas was not allowed to work the position.

Under date of May 14, 1947 another bulletin was issued, awarding the same position to Section Foreman James Westfall. Copies of assignment bulletins dated May 13th, 1947 and May 14, 1947 are set forth herein below:

ALL CONCERNED:

"Danville, Illinois, May 13, 1947

The following assignment:

BULLETIN No. 605—dated April 28, 1947, Permanent Foreman, Section 6, Crete, Illinois. No. 58308 C. J. Thomas.

C. Brannon,
Division Engineer."

ALL CONCERNED:

"Danville, Illinois, May 14, 1947

The following assignment:

BULLETIN No. 605—dated April 28, 1947, Permanent Foreman, Section 6, Crete, Illinois. No. 60741 James Westfall.

C. Brannon,
Division Engineer."

While there is no rule in the effective agreement stipulating that an employe must reside at specified locations, neither is there any rule prohibiting the Carrier from requiring that Section Foremen maintain residence so that they may be available to perform the work which is included in their assignment. The question of availability is always pertinent in determining the qualifications of an applicant for a particular position, and the employes have heretofore recognized that applicants for such positions were not eligible unless they could meet the residence requirements indicated in the bulletin. In the absence of any rules to the contrary, the Carrier contends that it is not an abuse of discretion to require that applicants for positions must be available for call under conditions where their services may be sorely needed. Under the circumstances, we submit that in the claim here at issue the employes are asking for a new rule, which they do not now have, limiting the Carrier's discretion to determine whether an applicant for a position is available therefor.

In view of the previous findings of the Board and the circumstances involved in the instant claim, the importance of having available in this position an employe who could be relied upon at all times to meet any emergency, the necessity of keeping clear at all times this particular section of the Railroad, and the precedent of long standing that this Carrier's section foremen live at or near their headquarters, we respectfully request that this claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: C. J. Thomas, a section foreman, bid on a position as foreman on Section 6, Crete, Illinois. On May 13, 1947, Carrier issued a bulletin awarding the job to him but on May 14, 1947 countermanded the award and assigned a junior employe to the position.

Carrier's reason for revoking the assignment is best shown by the following quotation from a letter of the Manager of Personnel to the General Chairman, dated July 22, 1947:

"Mr. Thomas requested assignment to this vacancy and his application was given favorable consideration until it was discovered that he intended to live at Momence, Illinois instead of at Crete. It is absolutely necessary that a foreman live in close proximity to his section. Therefore, Mr. James Westfall was assigned to that vacancy in lieu of Mr. Thomas.

It has always been the practice to require that section foremen live at or near their headquarters, and the few exceptions in this practice that have been permitted have not proven at all satisfactory. The foreman is responsible at all times for his section and during times of emergency, such as heavy storms or snow, it is essential that he be in a position to take any steps necessary to keep the lines clear. The interlocking plant at N. E. Tower is included in the territory of section 6 and during the winter months considerable attention is necessary to keep this plant in operation. Under the circumstances, I believe you can appreciate that it would not be entirely satisfactory for the foreman to live 20 miles away from his headquarters, particularly, when the same condition that might require his presence such as a heavy snowfall, might also prevent his reaching the point where he is needed.

The requirement that a foreman live at or near his headquarters has been generally recognized by all concerned for many years and in many cases men have refused to bid on certain vacancies because they did not want to move to that point."

It is to be noted that Mr. Thomas' seniority, fitness and ability is not questioned. Thus, the issue presented for determination is clearly whether or not in this instance Carrier may deny this assignment to claimant solely on the basis of his intended residence being a distance away from the section.

The existence of the practice asserted by the Carrier's Manager of

Personnel is contested by the Employes and they do show a number of instances not disproven by Carrier where section foremen reside from 14 to 22 miles distant from the section to which assigned. Carrier, however, counters this by asserting that all such assignments were made since the beginning of the War when the labor situation and housing problems were extremely critical and that in no instance did such arrangements prove satisfactory. Yet the Employes point to at least one instance before the War where a section foreman lived at Momence and covered the section at Goodnow, 16 miles away.

There is no provision in the instant Agreement regarding place of residence as a qualification for a position. The right of the Carrier by unilateral action to set up reasonable rules covering operational requirements on matters not covered by the collective bargaining Agreement and not in conflict therewith has been upheld by this Board in previous Awards. However, Carrier in this instance did not promulgate any such written rule, relying more or less upon an unwritten rule or practice in defense of its refusal to award the position to Thomas. A well established and uniformly applied practice in this respect, if not unreasonable, might well constitute a valid defense to such action. We cannot say with certainty that no such practice existed on this Carrier. We can, however, with some degree of certainty say that if such practice did exist, there have been numerous relaxations thereof, brought on, no doubt, by the critical labor situation and housing problems as asserted by Carrier. The Employes point out, however, that there is still a housing problem in Crete. It further appears that Thomas had assured his supervisors that in case of a sign of snow or snowing and sleet, he would remain on the job and not go home to Momence but get a room in Crete or vicinity so as to protect his job. It further appears that Thomas had his own automobile and could, therefore, get to his job from home in a relatively short time. He also had a telephone so that he could be reached in case of necessity. We think it is clear from all of the facts of record that Carrier was arbitrary in this instance in denying Thomas the right to work the assignment in question and, hence, a sustaining award is in order.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.