Award Number 14337
Docket Number MW-15600

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY— TEXAS AND LOUISIANA LINES

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

(1) The Carrier violated the Agreement when it failed and refused to reimburse Extra Gang Foreman George L. Dirr for the expenses incurred in moving his household effects from Lake Charles, Louisiana to San Antonio, Texas, March 31 to April 3, 1964. (Carrier's File MW-64-29)

(2) Exrta Gang Foreman George L. Dirr now be reimbursed in the amount of $442.89 because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The factual situation involved in this dispute was fully and accurately described in the following quoted letter of claim presentation:

"Houston, Texas, April 22, 1964

Mr. D. S. Gibson, Division Engineer
Southern Pacific Company
654 E. Commerce
San Antonio, Texas

Dear Sir:

I am in receipt of complaint from Track Foreman George L. Dirr claiming freight charges of $442.89 charged by Allied Van Lines Inc. for moving Mr. Dirr's household effects from Lake Charles, La. to San Antonio, Tex., leaving Lake Charles on March 31, 1964 and arriving in San Antonio, Tex., April 3, 1964. Also have copy of letter that Mr. Dirr wrote to you on March 7 requesting this move to be made on March 30 or 31, 1964, via piggy-back. Mr. Dirr states that he has not received a reply from you on this request.

/s/ George L. Dirr
Foreman Extra Gang 40"

Mr. Dirr was informed verbally, by the Division Engineer's Office, prior to his move that he would be provided with a suitable box car for the moving of his household goods as provided by Rule 20, Article XVI of the current Agreement. Mr. Dirr declined the use of a box car, and requested to be moved by "Piggy back" or truck-trailer loaded on flat car. This request was declined, and Mr. Dirr appealed directly to the Chief Engineer who also declined his request for truck service and reminded him of the provisions of the current agreement and assured him that he would be provided with a suitable box car. Claimant declined this offer and made arrangements with an outside truck line, "United Van Lines, Inc." for the move. Claimant's household effects were then loaded at Lake Charles, La., on March 31, 1964, and unloaded at San Antonio, Texas, April 3, 1964.

On April 24, 1964, Division Engineer received a letter dated April 22, 1964 from Vice Chairman Rhoudes, BofMofWE, claiming freight charges of $442.89 for Mr. Dirr for movement of his household effects by "Allied Van Lines, Inc." from Lake Charles, La., to San Antonio, Texas. This claim was declined on May 29, 1964, at which time the Vice Chairman was told that Claimant was offered a suitable box car for the movement of his household effects prior to his move, under the provisions of Rule 20 of Article XVI of the current Agreement. The claim was then appealed to Carrier's Manager of Personnel by petitioner's General Chairman by letter dated July 24, 1964. Copy of that letter is attached as **CARRIER'S EXHIBIT "A"**. Also attached is copy of letter addressed to petitioner's General Chairman by Corrier's Manager of Personnel dated September 8, 1964, denying the claim, **CARRIER'S EXHIBIT "B"**. Copy of General Chairman's letter of February 26, 1965 to Carrier's Manager of Personnel, which restated Organization's position, is attached as **CARRIER'S EXHIBIT "C"**.

(Exhibits not Reproduced)

OPINION OF BOARD: Claim is made by the Organization on behalf of employe Dirr requesting that he be reimbursed for expenses incurred by him in the moving of his household effects from Lake Charles, Louisiana to San Antonio, Texas on March 31, 1964. The amount stated in the claim is the sum of $442.89. The sum of $442.89 is made up as follows: $49.00 for packing and unpacking, a valuation charge of $25.00, 10 cartons, $28.50, 6 mirror cartons, $30.00, 7 wardrobe and mattress cartons, $26.25 and $284.14 for freight charges. Claim is made pursuant to the provisions of Rule 20 of Article XVI of the Agreement.

Carrier refused to reimburse Dirr for the said expenses and Claimant charges that such refusal on the part of the Carrier violates the terms of the Agreement between the parties.

Rule 20 of Article XVI of the Agreement reads as follows:

> "Employes transferred from one location to another by direction of the Management will be entitled to move their household effects without payment of freight charges.
>
> Employes transferring from one location to another in exercising their seniority rights will be entitled to move their household effects

without payment of freight charges only once in each twelve month period."

Prior to May of 1960, Claimant held seniority as a Track Foreman on the San Antonio Division of the Carrier; on May 16, 1960, Claimant was promoted to the position of Track Supervisor with headquarters at Lake Charles, Louisiana, on the Lafayette Division of the Carrier. He was moved by the Carrier from El Paso, Texas to Lake Charles, Louisiana, via piggy-back. The Claimant remained in his position as Track Supervisor until January 31, 1961, when his assignment was abolished. After his position was abolished, the Claimant was granted several leaves of absence to work as a Rodman in the Chief Engineer's Office at Houston, Texas and in other places on the Carrier's line. On June 28, 1962, his leave of absence was from the San Antonio Division Track Department to the Lafayette Division of the Track Department. Claimant worked in this division until May 6, 1963, when he bid on and was assigned to the position of Foreman, System Gang No. 40. He remained on the Lafayette Division until August 23, 1964, when this System Gang moved to Dallas, Texas, and on Decemver 6, 1963, the System Gang was moved to San Antonio, Texas.

On March 7, 1964, Claimant wrote to a Mr. D. S. Gibson, San Antonio, Texas, requesting "Piggy-Back transportation for the moving of his household effects from Lake Charles, Louisiana to San Antonio, Texas, move to be made March 30 or 31, 1964." Claimant in his letter also advised that he was moved from El Paso, Texas to Lake Charles, Louisiana, by piggy-back. (Record Page 14).

The Carrier in its submission admits the receipt of the letter under date of March 9, 1964, at the office of the Division Engineer, San Antonio, Texas.

Claimant alleges that he received no response to the request made in his letter of March 7, 1964, and in view of the fact that he had obligated himself to vacate the premises he occupied in Lake Charles and to remove his household effects on or before the dates set forth in his letter, he had his household effects crated and shipped by truck.

Carrier took the position in the negotiations on the property, and does here, that prior to the time that the Claimant moved his household effects, it had verbally informed the Claimant, through its Division Engineer's Office, that he would be provided with a suitable box car for the moving of his household goods as provided by Rule 20, Article XVI of the current Agreement, but that the Claimant declined the use of a box car and requested that he be moved by "Piggy-Back" or trucktrailer loaded on flat car. This request the Carrier also denied.

Claimant denies that he was verbally informed by anyone that he would be furnished with a suitable box car for the moving of his household effects and that the only reply he received, with reference to the request contained in his letter of March 7, 1964, was the letter he received from Mr. J. D. Ramsey, dated April 23, 1964, which was about seven weeks after he wrote his letter and three weeks after he found it necessary and imperative to move his household effects.

Although Carrier claims that it orally offered Claimant the use of a box car, there is no statement in this record by the person and/or persons who made such offer on behalf of the Carrier. The burden of proving that such

offer was made is on the Carrier. This it has failed to do.

Carrier raises two questions in this dispute, as follows:

1. Does Rule 20, by its terms, require the Carrier to provide an employee who qualifies under the rule with door-to-door transportation of his household effects without payment of freight charges?

2. Did the Claimant qualify for transportation of his household effects, in any event, under Rule 20 without payment of freight charges?

We answer the first question in the negative. Under the rule, which is clear and unambiguous, there was no contractual obligation on the part of the Carrier to furnish door-to-door service nor to crate and prepare the household effects for shipment. It only agreed "to move their household effects without payment of freight charges."

We answer the second question in the affirmative. We find that there is sufficient evidence in the record to show that the Carrier was obligated under Rule 20 to furnish to the Claimant transportation of his household effects without payment of freight charges. The fact that the Carrier claims that it offered to furnish Claimant with a box car for the transportation of his household effects is clear evidence that it recognizes its duty and obligation under the rule. The claim by the Carrier that its offer to furnish the Claimant with a box car was a gratuitous act on its part, is without merit. The Carrier was bound under the rule to move the household effects of the employe without payment of freight charges, whether by box car, passenger car or otherwise. The rule does not set forth the manner in which the household effects are to be transported. It clearly states that they are to be transported "without payment of freight charges."

The Organization takes issue with the argument advanced by the Carrier with reference to past practices and the inclusion of the 8 signed statements to substantiate its argument. We are familiar with the rules claimed by the Organization to have been violated. We have, however, under similar circumstances held that such evidence can be considered by this Board.

In Award 11598 (Dolnick) we held:

> "* * * We assume that the parties complied with provisions of the Railway Labor Act and had a conference before the claim was presented to the Board. At the conference the parties undoubtedly discussed their respective positions. We assume that the Carrier's position was no different then than as it later set out in its Ex Parte Submission. Presumably the specific 50 affidavits to the application of the Scope Rule and the historical and customary practice was, unquestionably, discussed. These affidavits merely support Carrier's position. They were sent to Petitioner about two weeks before Petitioner's Ex Parte submission was received by the Board. Under similar circumstances we have held that such evidence attached to the original submission can be considered by the Board. Awards 10385 (Dugan) and 8755 (Sempliner)."

In the dispute before us the record discloses that in the letter of April 23, 1964, by J. D. Ramsey, in answer to the letter of Claimant of March 7,

1964, we find the following language "It has always been the understanding that the Company would furnish box cars for the movement of household goods under this agreement rule only."

The letter of L. C. Albert, dated September 8, 1964, addressed to Mr. M. Burrough, General Chairman of BM of WE states "* * * but would be furnished with a suitable boxcar for movement of his household effects in compliance with Article XVI, Rule 20, of the M of W Agreement."

It is evident from the above quotations that is was the contention of the Carrier at all times, that it was its practice to furnish box cars for the movement of household effects and that the signed statements delivered to the Organization on April 13, 1965, approximately two weeks before the Organization's Ex Parte Submission (June 4, 1965) was merely for the purpose of supporting the position of the Carrier. We, accordingly, hold that these statements can be considered by the Board.

Under the rule the Carrier was required and obligated to move the household effects of the Claimant without payment of freight charges. It did not do so. Because of such failure on the part of the Carrier the Claimant had the right to transport or ship his household effects as he saw fit and to recover the reasonable costs thereof. There is nothing in the record to show that the expenses of transporting his household effects is unreasonable. The Carrier should reimburse the Claimant in the sum of $284.14 the transportation charges paid by him.

The Carrier being under no contractual obligation to crate or otherwise prepare the goods for shipment, the Claimant is not entitled to reimbursement of the sum of $158.75 for such other expenses.

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

That the parties waived oral hearing;

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 the Carrier should reimburse Claimant for the sum of $284.14. It is not obligated to pay the sum of $158.75.

A W A R D

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1966.

STATEMENT OF CARRIER MEMBERS, AWARD 14337, DOCKET MW-15600

(Referee Perelson)

This award is correct in holding that claimant was not entitled to piggyback transportation or transportation of his household effects from the door of his old home to the door of his new home; but it is not correct in holding that claimant is entitled to partial reimbursement. The latter holding is based on the finding that:

> "Although Carrier claims that it orally offered Claimant the use of a box car, **there is not statement in this record by the person and/or persons who made such offer on behalf of the Carrier** * * *"
>
> **(Emphasis ours.)**

The record contains a denial letter written by Division Engineer Gibson on May 29, 1964, in the course of handling this claim on the property. Engineer Gibson is the man to whom claimant directed his written request for "piggyback transportation." In this letter, Engineer Gibson states:

> "Mr. Dirr contacted this office and was advised verbally that movement of household effects would be recognized under Rule 20 * * * Mr. Dirr was informed verbally by Division Office that the Southern Pacific Company would provide him with a suitable box car for such transfer of household goods prior to his undertaking move as he did * * *"

At no time in handling of this claim on the property did the claimant himself deny Division Engineer Gibson's statement. The mere arguments of Employes' representatives that claimant was not verbally advised he would be provided with a suitable box car are not evidence.

For these and other reasons, all of which were called to the attention of the Referee in panel discussions, the entire claim should have been denied.

G. L. Naylor

R. A. DeRossett

C. H. Manoogian

W. M. Roberts

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