

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21545
Docket Number SG-21069

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chesapeake and Ohio Railway Company
(Chesapeake District)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) Carrier is in violation of the Signalman's Agreement, particularly Article VIII of the November 16, 1971 National Agreement, when it refused to grant to Claimants named below, transfer allowance of \$400.00 each, plus reimbursement for all expenses of moving his household and other personal effects (bills will be submitted later) and up to five (5) days off in order to move,

(b) Claimant Terry E. Donnal, C&O ID No. 2605829, be allowed the above referred to benefits when he moved his residence from his area of former employment at Delaware, Ohio to area of new employment after March 1, 1973 at Fostoria, Ohio, a distance of approximately 70 miles; and,

(c) Claimant Larry A. Jodouin, C&O ID No. 2606917, be allowed the benefits referred to in part (a) when his residence was moved from area of former employment at Walbridge, Ohio to area of new employment after March 1, 1973 at Fostoria, Ohio, a distance of approximately 31.5 miles." (General Chairman File: 73-57-216. Carrier file: SG-357)

OPINION OF BOARD: The claims of T. E. Donnal and L. A. Jodouin arise in connection with the Carrier's February 16, 1973 abolishment of all signal maintainer positions on the Hockings Division and advertising new ones. Claimant Donnal subsequent to such abolishment, bid in a Signal Maintainer position at Fostoria, Ohio, which is about 70 miles from his former reporting point at Delaware, Ohio. He moved his residence from Delaware to Fostoria. Claimant Jodouin bid in a position of Assistant Signal Maintainer at Walbridge, Ohio; the position had been advertised on February 9, 1973 and was awarded to Mr. Jodouin on February 23, 1973. He worked this position until displaced on March 5, 1973, at which time he bid in a vacant Assistant Signal Maintainer position at Fostoria. He moved his residence from Toledo to Perrysburg, Ohio.

These changes of residence, according to the Organization, entitle the Claimants to the benefits of Article VIII of the Signalmen's National Agreement of November 16, 1971. The Carrier concedes that its February 16 action was an operational change within the purview of Article VII; however, the Carrier asserts that the facts do not bring the Claimants within the Article. As regards Claimant Donnal, the Carrier says that he could have taken an Assistant Maintainer position at Delaware; that he voluntarily bid to the Signal Maintainer position at Fostoria; and that, therefore, he was not required to transfer to a new point as a result of the operational change. As regards Claimant Jodouin, the Carrier says that he did not take the vacancy at Fostoria until after he had acquired and worked a position at the original headquarters (Delaware) for five days, and that these circumstances do not establish that his transfer to Fostoria was caused by the operational change.

The text of Article VIII of the 1971 National Agreement reads 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 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 \$400. 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."

Although Claimant Donnal could have avoided the move to Fostoria had he been willing to forego the Signal Maintainer position at that point and take an Assistant Maintainer position at Delaware, this result would have occurred only if the Claimant had refrained from exercising his seniority rights to enjoy the higher rated position at Fostoria. Nothing in Article VIII, or in the whole record, suggests that an Employee is required to so restrict his seniority rights in order to save the Carrier from providing the benefits prescribed in that Article. The Carrier has cited no authority which

imposes such a restriction on an employee, and it is therefore concluded that Claimant Donnal was required to move his residence because of the operational change. Claimant Jodouin's situation is different. He worked at the original point for five days after the operational change took effect, so the change had occurred before his move to the position at Fostoria. Accordingly, his change of residence cannot be attributed to the operational change.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was violated.

A W A R D

Claim sustained in respect to T. E. Donnal and otherwise denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.