

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22171
Docket Number SG-22220

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(The Western Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Western Pacific Railroad Company that:

(a) The Western Pacific Railroad Company violated and/or refused to comply with the provisions of Article VIII of the National Mediation Agreement dated November 16, 1971.

(b) Mr. James E. Boyd be compensated in accordance with the provisions of Article VIII of the Mediation Agreement dated November 16, 1971, for moving expenses as claimed in the amount of \$78.37 plus transfer allowance of \$400.00, total amount of \$478.37, account required by Organizational changes made by Carrier to move his residence from Croville, California to Sacramento, California."

[Carrier file: B-Case No. 10720-1976-BRS]

OPINION OF BOARD: The claim herein arises from the fact that Claimant originally a TCS Maintainer at Carrier's Croville, California Signal Shop underwent the following movements of position and location: (1) because of abolishment of Test Foreman position at the Croville Signal Shop, the holder of that position exercised his right to displace Claimant from the latter's job of TCS Maintainer at that location. (2) Carrier thereafter invited bids for openings for Test Foreman and three Signalman positions at its Sacramento, California location about 80 miles from Croville (3) Claimant bid for one of the Signalmen openings at Sacramento (Organizations's statement is undisputed that this was the position nearest to Croville that his seniority would permit him to obtain). (4) Claimant's bid was accepted and he moved to Sacramento to work there as a Signalman (temporary).

Claimant seeks payment by Carrier of compensation for his moving expenses to Sacramento amounting to a total of \$478.37 on the basis of Article VIII of the November 16, 1971 Agreement between the parties which provides for such compensation, "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..." for more than 30 miles from his former reporting point.

Organization contends that Claimant's change of working site was the result of Carrier having moved a position to a new headquarters point; as such, it comes within the "technological, operational or organizational" change criteria of Article VIII for which moving costs must be subsidized by Carrier. In support of its position, Organization regards as significant the fact that in September 1975, Carrier abolished four positions at places other than Sacramento (one TCS Maintainer at Sacramento, one Signalman at Hayward and two Signalmen at Oroville), then with the same notice announcing the filling of four vacancies at Sacramento, additionally abolished the position of Test Foreman at Oroville (originally held by Claimant but then occupied by his "bumper").

Organization further contends that a reduction in the amount of signal construction work does not change the fact that by the rules adopted under the Federal Signal Inspection Act certain periodic tests must be made on signal apparatus. Inasmuch as there has been no showing to indicate Carrier had removed any of its signal system, there remains the same amount of inspection work as heretofore and it must be performed.

Organization concludes that Claimant was moved involuntarily as the result of Carrier action replacing five positions at Oroville and Hayward by four positions at Sacramento. It characterizes the resulting movement caused to Claimant as an involuntary act forced on him because of Carrier's operational or organizational decision to carry on its business by such deployment of its personnel.

Carrier contends that the move in question resulted from a "fluctuation in business", established by Award No. 167 of SBA No. 605 as not being encompassed by "organizational" change as used in the parties' Agreement of November 16, 1971.

In this case, according to Carrier, when the position of Signal Test Foreman was established (held at first by Claimant, then by his displacer), it was for the purpose of supervising a signal shop at Oroville incidental to and supportive of work, "most" of which consisted of installation of grade crossing protection devices between Sacramento and Oroville. Eventually all such scheduled crossing protection improvement was accomplished. Accordingly, the need for the Oroville Signal Shop disappeared and the position of Signal Test Foreman was abolished as superfluous. This resulted in the incumbent in that

position exercising his seniority rights to displace Claimant and the latter, in turn bidding into a vacancy at Sacramento. Carrier describes this as "a classic example of a force reduction due to a fluctuation in business and of the personnel displacements which inevitably flow therefrom".

The Board is persuaded that although the shifts in personnel were triggered by a diminution in functional need of a particular kind and at a particular location, it is more in keeping with the new configuration of positions established by Carrier to regard the changes in places and kinds of assignments as a redeployment to meet the operational needs of the Carrier. As such, the shift of Claimant came about because he had no other choice under the positions and places pattern established by Carrier. Accordingly, we believe that Claimant is entitled to the benefits provided by Article VIII of the National Mediation Agreement of November 16, 1971.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.