

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22175
Docket Number SG-22071

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company
((Former Chicago & Eastern Illinois Railroad)

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

***on behalf of Signal Maintainer R. S. Stanley and S. P. Brown
for transfer allowance benefits provided in Article VIII of the Agree-
ment signed November 16, 1971."

/Carrier's file: K 217-28/

OPINION OF BOARD: The question presented by this case is whether
the Claimants are entitled to transfer allowance
benefits under Article VIII of the Agreement of November 16, 1971.
The pertinent contract provision reads as follows:

"CHANGE OF RESIDENCE

ARTICLE VIII--NOVEMBER 16, 1971 AGREEMENT
CHANGES OF RESIDENCE DUE TO TECHNOLOGICAL,
OPERATIONAL OR ORGANIZATIONAL CHANGES

When a carrier makes a technological, operational, or
organizational change requiring an employe 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, notwith-
standing anything to the contrary contained in said
provisions, except that the employe 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 employe 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 employe is changed is not
more than 30 miles from his former reporting point."
(Underscoring added)

There is no question that Claimants ultimately moved more than 30 miles but the dispute centers on the causation underlying that move. The Organization insists that the personnel transactions which resulted in Claimants' moves from Yard Center and Villa Grove, Illinois, respectively, to Salem, Illinois were "operational or organizational changes" as those terms are used in Article VIII, supra. The Carrier maintains that the moves were solely the result of reductions in force for reasons of economy and therefore do not come under the ambit of Article VIII. The precedents of which we have been apprised on this record are consistent in holding that Article VIII does not apply to transfers brought about solely by force reductions and job abolishments, i.e., that "pure" force reductions and job abolishments are not "technological, operational or organizational changes" for purposes of that provision. See Awards 7, 167, 287 and 300 of S.B.A. No. 605.

As moving party the Organization has the burden of proving that Claimants transfers were brought about by something more than the job abolishments which clearly and unequivocally are shown on the record. The crux of the Organization's case is that Carrier on January 2, 1976 simultaneously abolished Claimants' positions in Yard Center and Villa Grove and created new positions in Salem. (Emphasis added) From this premise the Organization argues that this is not a "simple" job abolishment with attendant displacements but rather an "organizational change" in the Signal Department.

Carrier in its submission argues for the first time that the positions into which Claimants ultimately moved were pre-existing vacancies on Gang 1752 in Salem, which had nothing to do with the Department-wide abolishments announced on January 2, 1976. Also in its submission Carrier states that Claimants' positions were abolished on January 15, 1976. On the latter point, however, the record shows that Claimants received abolishment notices dated January 2, 1976 abolishing their positions at the end of the workday, Friday, January 9, 1976. It is unrefuted that the two positions at Salem, Illinois were advertised for bid on the same day as Claimants' positions were abolished, January 2, 1976. The coincidence of dates is only circumstantial; but corroborating evidence on the issue of simultaneous abolishment of positions occupied by Claimants and creation of the positions into which they transferred is found in the final denial letter of November 30, 1976. In that letter Carrier's Director of Labor Relations stated as follows:

"In our conference, we reviewed the facts in connection with this dispute, i.e., several job abolishments, including all assistant signal maintainer positions assigned to the signal gang headquartered at Salem, Illinois. Two signal maintainer positions were established on the signal gang at Salem to absorb two signal maintainers who were unable to exercise displacement rights due to the fact they were the junior maintainers on the system. These jobs were established so as to retain these men in Carrier's service. There were no technological, operational or organizational changes to which Article VIII of the November 16, 1971 Agreement would apply."

We are required by principles long established to confine our review to evidence raised and joined on the property. In doing so, and thereby necessarily rejecting contrary assertions raised by Carrier for the first time in its submission, there is no question that the record supports the Organization's position relative to simultaneous abolishment of Claimants' positions and creation of new positions in Salem, Illinois.

The simultaneous creation and abolishment evinces a coordinated plan of restructuring the Department. Carrier avers that the abolishment was to benefit Carrier by cost reduction; but that the establishment of new positions was to benefit the Claimants by keeping them in service. We have no reason to disbelieve Carrier's assertions, but Article VIII does not speak of motivation and on the facts before us we are not persuaded to go beyond the language of the contract. We are convinced in the facts and circumstances of this case that Carrier made an "organizational change" in the Signal Department which required Claimants to transfer to a new point of employment. The claim must be sustained.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

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

