

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25862
Docket Number SG-25838

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Seaboard System Railroad

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the
Brotherhood of Railroad Signalmen on the Seaboard System
Railroad, L&N Agreement:

On behalf of Signal Maintainer T. M. Nalley, headquartered at
Elizabethtown, Kentucky for moving expense allowance incurred as a result of
operational or organizational change when the Carrier made a territorial
change in a signal maintainer's territory which resulted in the claimant being
displaced."

OPINION OF BOARD: Article VIII of the November 16, 1971 National Agreement
to which the parties are signatory provides in part:

"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 ... 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."

In the January 8, 1982 National Agreement a Note, effective January
1, 1982 was added. It reads:

"The above paragraph applies not only to the employee who is
initially displaced under the circumstances described but
also to any other employee who is subsequently displaced
under the circumstances described and is required to move
his residence."

Rule 63 of the Agreement, Changing Headquarters or Territorial Limits provides:

"When a change is made in the location of an employee's
headquarters, or when the territorial limits are materially
changed, the position will be rebulletined as a new position
only when so requested by the General Chairman. Such
request must be in writing and made within twenty days from
date of change."

In January, 1978 the predecessor Carrier (L&N) had advertised a position of Signal Maintainer and required "The successful applicant must locate to within 30 miles of the headquarters point, within 60 days" The Organization protested and in its claim noted "... a continuing grievance to protest all future Signal Department bulletins issued that have a requirement that a successful applicant must locate to within any set distance...."

In Award 23392 issued on October 6, 1981 the Third Division found Carrier had not violated the Agreement by imposing the requirement.

Signal Maintainer Hall was assigned to a Signal Maintainer's position headquartered at Elizabethtown, Kentucky at the time Award 23392 was issued. He resided at Louisville, Kentucky, a distance of 42 miles from Elizabethtown.

On December 15, 1981 Carrier acquired 3.8 miles of track located in Elizabethtown from the ICG Railroad. On December 21, 1981 Hall wrote the General Chairman noting this addition to his territory and requested his job be "rebulletined under Rule 63" so that he could comply with the 30 mile rule. On December 28, 1981 the General Chairman wrote the Carrier stating:

"Inasmuch as the Signal Maintainers Territory, Gang #4 headquartered at Elizabethtown, Kentucky, have been materially changed; this is to request that this position now be rebulletined as a new position in accordance with Rule 63 of the current Signalman's Agreement."

The position was advertised on January 11, 1982. The bulletin said the position had been vacated account "Territorial Change." The position was awarded to Lead Signalman Bagwell whose seniority date is January 7, 1975. Hall then used his displacement rights to bump Signal Maintainer Nalley (Claimant) at Louisville. There were employees junior to Nalley at Louisville but not on the first trick which Nalley was working when bumped. Nalley then used his seniority to displace Bagwell at Elizabethtown and on September 3, 1982 inquired regarding moving expenses because "in compliance with regulation requiring location of residence within 30 miles from my headquarters, I will be relocating in Upton, Kentucky." On September 10 Carrier declined to pay moving expenses noting claimant "took the Elizabethtown job on your own decision." Hence this claim.

Carrier argues there was no organizational or operational change requiring Claimant to move. Further, its position is that Claimant could have exercised displacement rights over several employees at Louisville and therefore was not required to move even if in fact there was an operational or organizational change. Rather, it argues Claimant wanted to move for personal reasons.

The Organization argues Claimant was required to move his residence in order to retain a comparable position, as a result of an operational change. It also contends an employee's motivation or desire to live in a certain area is not material if the contractual requirements are present.

The first question is whether the addition of the 3.8 miles of track-
age constituted an organizational or operational change. The Carrier did not
disagree when the General Chairman characterized the addition of this trackage
as a material change, although it now contends failure to do so was merely
because it did not matter to it who protected Hall's job. We find that the
addition of the 3.8 miles of track which formerly belonged to and was apparent-
ly operated by another railroad did constitute an operational or organiza-
tional change within the meaning of Article XII of the January 8, 1982
National Agreement if it was a change "requiring an employee to transfer...."
This is crucial because the Agreement makes clear that both elements must be
present. Clearly the change did not require Hall to transfer anywhere but it
did afford him the opportunity to request rebulletining.

The Organization's argument seems to be that the change gave Hall a
contractual right to request rebulletining and was also of a type contemplated
by the National Agreement; the result of the rebulletining was to displace
Claimant and therefore Claimant's displacement was the result of the organiza-
tional or operational change and thus Claimant falls within the description of
"...any other employee who is subsequently displaced" As this Board
reads the January 8, 1982 National Agreement, the Note is intended to afford
relief to employees who are caught up in what could be described as a chain
reaction or domino effect of the initial displacement. Clearly from the
language, causation must be present. Here the first link is not present, nor
did the first domino fall. The first employee (Hall) was never "displaced
under the circumstances described." While there was an "operational or
organizational change" it was not one "requiring an employee to transfer" and
therefore not a change within the contemplation of Article VIII of the
November 16, 1971 National Agreement. Hall's displacement was not required by
an Article VIII type change. Rather it was a result of his exercising a
contractual right not related at all to Article VIII. It was his exercise of
that right which required Claimant to transfer if he wished to remain on the
first track.

In view of the above it is not necessary to consider the additional
arguments raised by the parties.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.

LABOR MEMBER'S DISSENT

TO

AWARD 25862 - DOCKET SG 25838

(Referee Cloney)

The Majority was correct when they recognized that the addition of 3.8 miles of trackage constituted an organizational or operational change. The Majority, however, went amiss when they failed to recognize that the organizational or operational change also triggered the domino effect contemplated by Article XII of the January 8, 1982 National Agreement.

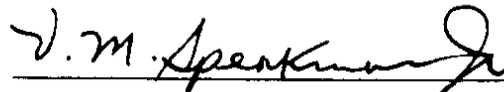
Possibly more serious was the fact that the Majority exceeded their statutory limitations by expanding the language of an Agreement, giving no weight to its literal meaning. The disputed language, "The above paragraph applies not only to the employee who is initially displaced under the circumstances described but also to any other employee who is subsequently displaced under the circumstances described and is required to move his residence." clearly provides the mechanics for moving benefits for employees who are subsequently displaced under certain circumstances (i.e., technological, operational, or organizational change) and are required to move their residence.

Herein, the net result is equally clear. An operational or organizational change was effectuated by the acquisition of the 3.8 miles of trackage located in Elizabethtown, Kentucky. The acquisition "materially changed" the incumbent's (Hall's) territory. Pursuant to Rule 63 of the Schedule Agreement, the incumbent opted to have his territory rebulletined and subsequently displaced claimant. Claimant could not exercise displace-

ment rights onto a comparable first trick position and was required to move; thus he was contractually entitled to moving expenses under the subsequent provisions of the January 8, 1982 National Agreement. Contrary to the holdings of the Majority, causation was present in the instant case.

Through no cause of his own, Claimant was adversely affected and caused to move as a direct result of an operational or organizational change. Carrier's residency requirements, supported by Award 23392, did not obviate the contractual provisions of Article XII of the January 8, 1982 National Agreement. Reference to Award 23392 served no relevant purpose other than to confuse the issue. Apparently, the Majority, in its findings, was caught up in the confusion.

The Award is in error. A dissent is in order, one that I respectfully submit.



V. M. Speakman, Jr., Labor Member