

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (UP):

Claim on behalf of Brother B. M. Bonner, headquartered at Fremont, California, for benefits totalling \$2,153.25, account of the Carrier violated the current Signalmen's Agreement, as amended, particularly APPENDIX No. 14, when it refused to pay him for his move from Stockton to Fremont, California. Carrier file 870709G."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On May 4, 1987, the Organization filed a Claim on behalf of the Claimant for moving expenses incurred by the Claimant when he moved from Stockton to Fremont, California.

Although there are certain contentions with respect to the parties time limit obligations, the Board concludes that this matter may best be disposed of on its merits.

Both parties, at great length, have pursued their respective positions before the Board. In essence, the Organization asserts that the incumbent was adversely affected by an organizational change under the Agreement which required the Claimant to move his residence. To meet its burden, the Organization must show that the work at issue is now being performed elsewhere, in this case, at Pocatello, Idaho. We do not find evidence in the record developed on the property that such has been the case. Accordingly, the Claim is denied.

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Award No. 28321
Docket No. SG-28467
90-3-88-3-262

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.

**LABOR MEMBER'S DISSENT TO
AWARD 28321 DOCKET NO. SG-28467
(REFEREE MUESSIG)**

The majority has erred in the case at bar and has issued a decision that is contrary to weighted authority on the subject of procedural issues as presented on the property. The guidelines established regarding procedural issues are well established in the railroad industry and have been adjudicated many times in the past. The Board has repeatedly ruled that both parties must follow the mandated time limits before the Board can address the merits of a dispute. However, as indicated in Award 28321, the majority has deviated from the established standard and fashioned an award that flies in the face of historic arbitrary authority. Wherein, they acknowledged the time limit violations and proceeded to address the merits of the case.

Notwithstanding, the facts in this case indicated that the Claimant's position was abolished following Carrier's coordination of its signal shops. As a result, the Claimant was required to follow the work which required him to transfer his residence. As evidence, the crux of this dispute centered around Carrier's refusal to reimburse the Claimant for moving expenses.

The majority denied the case on the premise that the Organization must prove that the work at issue is now being performed elsewhere, in this case the coordinated signal shop. It is evident that the majority failed to review the facts in this case and fashioned an award that can only be considered palpably erroneous and, therefore, carries no precedential value.

Charlie A. McGraw

July 2, 1990