

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32526

Docket No. MS-32848

98-3-96-3-191

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(T. R. Jensen

PARTIES TO DISPUTE:

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“(1) Did the carrier violate the CNW April 26, 1972 agreement referred to as ‘Appendix D’ when it failed and refused to compensate myself (T. R. Jensen) the real estate benefits available under Appendix D, when I was required to change by point of employment resulting in a change of my residence in October of 1992?

(2) If the answer to the above question NO 1 is in the affirmative, the carrier shall compensate myself (T. R. Jensen) to 12% of the fair market value of my home, by using the CNW’S Appraisals which were done in December of 1992 to figure the market value.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The instant case involves a dispute over the application of Appendix D, Article IX and X of the Agreement between the Parties. At the time the dispute arose, Claimant was employed in the Carrier's Materials Department in Council Bluffs, Iowa. On October 8, 1992, Claimant's position at Council Bluffs was abolished. On October 12, 1992, Claimant displaced to Marshalltown, Iowa. He began work in that new position on October 19, 1992. At or about the same time, Claimant applied for the \$500.00 transfer allowance available under Article IX-B of the Agreement. He later applied for the real estate benefits under Articles IX and X, on November 2, 1992. While employed at Marshalltown, Claimant took a three week vacation from October 26, 1992, through November 13, 1992. Claimant was displaced from the Marshalltown position on December 4, 1992, subsequently displaced a Yard Clerk job at Fremont, Nebraska.

Article IX and X read in pertinent part as follows:

"(a) Any employe of the carrier coming under the scope of the agreement between the carrier and BRAC who is continued in service after having been adversely affected by force reductions resulting from permanent abolition of a position (or who is later restored to service from the group of employes entitled to receive a furlough allowance) who is required to change the point of his employment as a result of such abolition of a position and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed five working days) used in securing a place of residence in his new location. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date adversely affected and the claim must be submitted within ninety (90) days after the expenses are incurred. 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, to be computed via the most direct highway mileage.

(b) Any employe entitled to benefits under Article IX, Section (a), shall, in addition thereto, receive a transfer allowance of five hundred dollars (\$500.00).

* * *

ARTICLE X

(a) The following provisions shall apply, to the extent they are applicable in each instance to any employe who is retained in the service of the C&NW subsequent to force reductions resulting from permanent abolition of a position (or who is later restored to such service from the group of employes entitled to receive a furlough allowance) who is required to change the point of his employment as a result of such permanent position abolition and is therefore required to move his place of residence. . . ."

Claimant's request for the \$500.00 allowance was paid by the Carrier. However, his request for the real estate benefit was declined. During processing on the property, the Carrier contended that working in Marshalltown for two three week periods did not constitute a relocation as contemplated by the TCU/CNW Agreement. The CNW also pointed out that Claimant had worked in Marshalltown only approximately 18 days. They referred Claimant to Public Law Board No. 4848, Award 31, which held that failure to establish a primary residence in a new location failed to meet the principal criterion necessary for benefits awarded under Articles IX and X. The Organization concurred with the Carrier in its determination. Subsequently, Claimant elected to pursue the matter ex parte.

The instant case is not identical to the matter at issue in Award 31 of Public Law Board No. 4848. In that case the Board found that the Claimant had not ceased "living" at his original residence. In the instant case, while Claimant "lived" at his new location, he did not have to change his primary residence, or move his household goods and his family from Council Bluffs to Marshalltown. Nor did Claimant "obtain shelter, on a continuing basis, at his new location." Rather, he spent a few days sharing an apartment with a co-worker, and the remaining days at a hotel. Accordingly, Claimant has not met the criteria set forth in Article IX. Therefore, he is not entitled to the real estate allowance provided in Attachment A, Section 5(a). For reasons not clear on this record, the Carrier elected to pay Claimant \$500.00. Such payment does not constitute an admission by Carrier that Claimant is also entitled to the Article IX real estate benefits.

AWARD

Claim denied.

ORDER

**This Board, after consideration of the dispute identified above, hereby orders that
an award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 25th day of March 1998.