

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36007
Docket No. SG-35842
02-3-99-3-847**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company
((former Southern Pacific)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Co. (former Southern Pacific):

Claim on behalf of M.P. Gotthardt for payment of moving expenses totaling \$2,338.98, account Carrier violated the current Signalmen's Agreement, particularly Attachment "G" when on March 20, 1998, it made an organizational/operational change and then failed to pay the Claimant for his relocation expenses. Carrier File No. 1164848. General Chairman's File No. SWGC-1811. BRS File Case No. 11024-SP."

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 dispute requires an interpretation of the meaning and intent of Attachment "G" of the parties' Negotiated Rules Agreement. Article XII of said Attachment "G" reads as follows:

"ATTACHMENT G

Article XII - Changes of Residence Due to Technological, Operational or Organizational Changes

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 in Sections 10 and 11 of the Washington Job Protection Agreement, notwithstanding anything to the contrary contained in said provisions, except that the employee 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 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 thirty (30) miles from his former reporting point."

Section 10(a) of the Washington Job Protection Agreement as referenced in Attachment "G" reads as follows:

"Section 10(a) Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination 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 two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation

shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred."

In this case, the Claimant was assigned to a position of Maintainer with headquarters at San Antonio, Texas. On March 5, 1998, the Carrier bulletined two new Signal Maintainer positions with headquarters at Kirby, Texas, which is located within 30 miles of San Antonio. Effective March 31, 1998, the Claimant's Maintainer position was abolished. At the time of the abolishment, both of the newly-created Maintainer positions were available to the Claimant on the basis of his seniority standing. Rather than exercise his seniority to one of the two available Maintainer positions at Kirby, Texas, the Claimant elected to displace on a Maintainer position at Seguin, Texas. Because Seguin, Texas, is located 75 miles from San Antonio and because the Claimant moved his residence to Seguin, Texas, he requested reimbursement for his relocation and moving expenses allegedly in accordance with the provisions of Attachment "G."

The Organization's position in this dispute alleges that there were no similar daytime positions available for the Claimant at San Antonio and he was, therefore, forced to transfer to Seguin to obtain a position equivalent to the position he previously held. It contends that this move was not a voluntary action on the Claimant's part and therefore the relocation and moving allowances provided for in Attachment "G" are applicable in this case.

The Carrier argues that there were, in fact, two similar positions available to the Claimant within 30 miles of his previous headquarters location. It contends the Claimant voluntarily opted to use his seniority to obtain the Maintainer position in Seguin, Texas, because he did not wish to work a standard "shift" assignment.

From the Board's review of the facts in this case, several cogent points become obvious. The establishment of the two Maintainer positions at Kirby, Texas, could well be considered an operational change. However, that fact alone does not entitle the Claimant to decline to accept one of the two available positions and voluntarily elect to displace on a position that was located 75 miles distant. The Board cannot differentiate between the Maintainer position at Seguin, Texas, to which the Claimant displaced and the two "shift" Maintainer positions at Kirby, Texas. The newly-created Maintainer

positions had rates of pay equal to or greater than the rate of pay of the abolished position. The newly-created positions were in the same work and seniority class as the abolished position. The newly-created positions were both bulletined as "daytime" positions. The location of the newly-created positions was within the 30-mile radius that triggers the application of the provisions of Attachment "G." It is an established fact that the Claimant was not "required" to move his place of residence in order to hold a position similar to the one he held at the time of its abolishment. His election to move to Seguin, Texas, was purely voluntary on his part. The relocation and moving expenses provisions of Attachment "G" are not applicable in this instance. The claim as presented is denied.

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 16th day of April, 2002.