

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37752
Docket No. SG-38089
06-3-03-3-529

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe:

Claim on behalf of J. K. Fineout, for \$800.00 transfer allowance; \$3500.00 real estate commission; \$260.00 expenses for movers; \$387.80, house hunting expenses, and 40 hours at the Signalman's straight time rate of pay for the 5 working days that were not allowed for the Claimant's transfer, account Carrier violated the current Signalmen's Agreement, particularly Rule 32 (Changes of Residence Due to Technological, Operational or Organizational Changes) when on February 15, 2002, Carrier abolished the Claimant's position of Signal Technician and then refused to allow the Claimant those benefits for the abolishment of his position located at Grand Forks, ND. Carrier's File No. 35 03 0004. General Chairman's File No. 02-103-BNSF-154-TC. BRS File Case No. 12727-BNSF.”

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 record reflects that Claimant J. K. Fineout had been headquartered at Grand Forks, North Dakota, and serving on the Twin Cities Seniority District as one of eight Signal Electronic Technicians similarly situated when on February 15, 2002 all eight positions were abolished due to economic conditions. After exercising his seniority as a Signalman to join a Signal Gang at Carlton, Minnesota, on February 18, 2002, he received reimbursement for certain moving expenses pursuant to Agreement Rule 52 - "Free Transportation."

In this claim, the Organization maintains that the Claimant was entitled to the relocation benefits provided in Rule 32 of the Agreement, "Changes of Residence Due to Technological, Operational or Organizational Changes." The Carrier's multiple rejections of the claim on the property assert that Rule 32 was inapplicable to the Claimant's situation because it involved a simple force reduction necessitated by ongoing economic conditions. That Rule provides as follows:

"When 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 five (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 \$800 and real estate commission paid to a licensed realtor (not to exceed \$3500 or 7 percentum of the sale price, whichever is less.) 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."

Rule 52 extends free transportation and shipment of household goods for employees and families transferred ". . . by direction of the Carrier to positions which necessitate a change of residence." Employees changing residences due to exercise of seniority rights are covered by Rule 52 (D) which provides as follows:

"Employees exercising seniority rights to new positions or vacancies which necessitate a change of residence will receive free transportation for themselves, dependent members of their families and household goods, when it does not conflict with State or Federal Laws."

The predicate for this claim is the Organization's contention that operational and organizational changes were implicated by abolishment of Fineout's Signal Electronic Technician position, thus triggering his entitlement to the more extensive moving allowances. As has been determined in numerous prior Awards of this Division, reductions in force are not automatically presumed to result from technological, operational or organizational changes. The Organization has the burden of establishing by convincing evidence that the job abolishment in dispute is a result of such factors and not caused by lack of work. We find nothing in this record that makes that necessary connection. Accordingly the claim fails for lack of proof and will be denied.

AWARD

Claim denied.

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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 21st day of March 2006.