

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39715
Docket No. SG-38771
09-3-NRAB-00003-050168
(05-3-168)**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 that:

Claim on behalf of J. D. Allen, for reimbursement for all expenses required for moving his household belongings and other personal effects, travel expense for him and his family along with temporary living expenses, the \$800.00 transfer allowance and the loss suffered in the sale of the Claimant's home, account Carrier violated the current Signalmen's Agreement, particularly Rule 55, Appendix F and Article XII, Sections 10 and 11 of the Washington Job Protection Agreement, when it failed to provide the Claimant with any reimbursement for losses and expenses incurred as a result of a forced move from Aurora, Colorado, to Pueblo, Colorado, a distance of 100 miles. Carrier's File No. 1394678. General Chairman's File No. N wjp 55 402. BRS File Case No. 13114-UP.”

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.

On November 28, 2003, the Claimant was force-assigned under Rule 55 from his Signalman's position at Denver, Colorado, to a Signal Maintainer's position at Pueblo, Colorado.

Rule 55 provides that employees who are force-assigned are eligible for relocation benefits. The Carrier concedes that the Claimant is entitled to the contractual relocation benefits for his move from his home in Aurora, Colorado, to Pueblo. The dispute in this matter is over the items requested by the Claimant for reimbursement.

Article XII provides that the Claimant be allowed five working days to secure a new residence and to receive a moving allowance of \$800.00. Article XII, Section 10(a) further provides that the Claimant shall be reimbursed for certain expenses related to a required move. Article XII, Section 11(a) provides that if the affected employee owns a home in the locality from which he is required to move, ". . . he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value," but on condition that the Carrier ". . . shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party."

As stated in its letter of June 30, 2004, the Carrier does not contest that it is obligated to pay the Claimant \$800.00 in moving allowance, \$713.50 for U-Haul rental expense, \$75.60 mileage expense for the U-Haul and \$75.60 mileage expense for moving personal vehicles, totaling \$1,644.70 as requested by the Claimant. If not already paid, the Carrier shall compensate the Claimant in that amount.

The Claimant also sought reimbursement for packing materials for the move. Those expenses do fall under the language ". . . shall be reimbursed for all expenses of moving his household and other personal effects . . ." under Article XII, Section 10(a) and shall be reimbursed to him.

The Claimant also requested reimbursement for storage rental and for the cost of what appears to be a dumpster. It has not been shown in this case how those items fall within the governing language. While there may be an explanation concerning how those expenses directly related to the Claimant's move, that explanation is not in this record. Those expenses will not be allowed.

The Claimant also sought reimbursement for rental of an apartment in Pueblo. The Claimant produced a six month lease for an apartment for the period December 20, 2003 through June 30, 2004. Even assuming certain temporary living expenses can be reimbursed (which the Carrier disputes) from what is before us, we are unable to discern whether those expenses sought by the Claimant were expenses incurred on a temporary basis as the Claimant sought a new residence, or if those were the expenses for a new permanent residence. Even giving the Organization the benefit of the doubt that certain temporary living expenses are reimbursable, because the burden is on the Claimant and the Organization to sufficiently explain those costs in this case, that burden has not been met and those claimed expenses shall not be allowed.

With respect to the Claimant's request for losses resulting from the sale of his home in Aurora (represented by the Claimant to be \$6,398) that requested payment shall not be allowed. We need not consider the accuracy of the calculation of the loss (apparently through a calculation by a "Comparative Market Analysis" performed by a real estate broker). While the Carrier correctly pointed out in its March 29, 2004 letter that ". . . there is no provision in the agreement for the Carrier to purchase the Claimant's home in the event he was unable to sell it," Article XII, Section 11(a) does require that the Carrier ". . . shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party." The record does not sufficiently support any showing that the Claimant complied with that requirement and gave the Carrier the first opportunity to purchase his home before he sold it.

Finally, there appears to be a dispute over whether the Claimant was afforded five working days to secure a residence as provided in Article XII. The record shows that the Claimant was given five days off to move during the week of December 29, 2003. No further relief in that respect shall be granted.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of June 2009.