

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40838
Docket No. SG-40611
11-3-NRAB-00003-080462**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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:

Claim on behalf of B. G. Meuchel, for \$11,050.00 plus any money paid to the Claimant that Carrier ‘recollected,’ account Carrier violated the current Signalmen’s Agreement, particularly Rule 55, Article XII and sections 10 and 11 of the Washington Job Protection Agreement, when it failed to compensate the Claimant for the expenses he incurred in relocating his place of residence and for the allowances as provided in the Agreement when he was force assigned to a position in Evanston, Wyoming effective August 4, 2006. Carrier’s File No. 1473715. General Chairman’s File No. N 55 679. BRS File Case No. 13968-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.

The issue in this case is whether the Claimant received all benefits he was entitled to under Sections 10 and 11 of the Washington Job Protection Agreement (WJPA) when he was force assigned to the position of Signal Maintainer in Evanston, Wyoming, in August 2006, requiring him to move his residence 400 miles from Eaton, Colorado. The applicable Agreement provisions and Sections of the WJPA, which admittedly apply to the Claimant's situation, are set forth below.

“RULE 55 - NO VALID BIDS RECEIVED

* * *

All employees force assigned to a position under the provisions of this rule will be eligible for Article XII benefits.

APPENDIX F

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 \$800. . . .

ARTICLE XII - NATIONAL AGREEMENT

Section 10 (a). Any employee who is retained in the service of any carrier involved in a particular coordination . . . 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. . . .

Section 11 (a). The following provisions shall apply. . .

1. If the employee owns his own 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. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the house at such fair value before it is sold by the employee to any other party.

* * *

2. (d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers. . . .”

There is no dispute that the Claimant was force assigned and entitled to reimbursement of moving expenses. It appears that the amounts disputed are not the Section 10 moving and travel expenses, but, rather, the Section 11 reimbursement for the loss incurred as a result of the sale of the home owned by the Claimant for less than its fair value, and expenses related thereto. The fair value of the Claimant's house was agreed to be \$205,000; it was sold for \$188,000. The record reflects that, along with travel and moving expenses, five days' paid time off to look for a place to live and a transfer allowance of \$800, the Carrier reimbursed the Claimant for the \$17,000 difference between the sales price and the fair value of his house, less \$4,250 in applicable Federal and State taxes.

This claim seeks the following additional entitlements:

\$2,050 in pre-payment penalty for the early termination of the Claimant's mortgage loan.

\$8,200 in prepayment penalty for the early termination of his home equity line of credit.

\$4,250 in taxes deducted from the \$17,000 payment for loss of fair value in the sale of his home.

\$3,000 for pre-paid closing costs that the Claimant agreed to pay to the buyer.

\$6,400 commission the Claimant agreed to pay the real estate broker.

A Carrier manager initially paid \$9,400 to compensate for the final two items listed, but, when the Carrier discovered this error, it recouped that amount via a garnishment of the Claimant's wages over time.

The Organization argues that it is undisputed that the Claimant is entitled to the benefits of Sections 10 and 11 of the WJPA. It further asserts that the costs that the Claimant incurred in actually selling the house are encompassed within the fair value of the sale of his house. Accordingly, the Claimant should be reimbursed for

those costs. The Organization asserts that these items are within the purview and coverage of the WJPA, citing Public Law Board No. 1157, Award 33.

The Carrier contends that the Claimant received reimbursement for all of his entitlements under Sections 10 and 11 of the WJPA, and that the Organization failed to sustain its burden of proving that the categories of items he seeks to recover in this claim are encompassed within, or covered by, such provisions, citing Public Law Board No. 5179, Award 15; Third Division Awards 39715, 27895, 27851 and 26033. It submits that the WJPA entitles the Claimant only to the "loss suffered in the sale of his home for less than its fair value" which does not include matters not encompassed in the purchase and sale agreement such as closing costs and commissions, or any pre-payment penalties that may be terms of mortgage or loan documents, relying on TCU v. UP (McCartney), (Rehmus, 1992). The Carrier also notes that it appropriately made tax deductions from the \$17,000 paid to the Claimant with respect to the sale of his house, which was its obligation to the Government and that the Claimant was free to seek reimbursement of any excess taxes paid through the filing of his tax returns.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of establishing a violation of Rule 55 or Sections 10 or 11 of the WJPA in this case. The category of expenses sought by the Claimant are not specifically encompassed within the provisions of the Agreement, which only provides for reimbursement for the loss suffered between the fair value of the house and its sale price as a result of the forced assignment. Closing costs and commissions bear no relationship to the loss to the Claimant of the fair value of his house, because these are expenses he would have to pay at any time his house was sold. See, TCU v. UP, supra. Additionally, the Organization has not established any precedent for its contention that taxes were not appropriately deducted from the reimbursement of the loss of value to the Claimant. Finally, as noted by the Carrier, the pre-payment penalties associated with the Claimant's loan and mortgage documents, and not mentioned in the purchase and sale agreements, have not been shown to be within the contemplation of the parties when providing for compensation for loss of home value, and are independent obligations of the Claimant established as a result of separate agreements entered into with financial establishments using his house as collateral. None of these items are entitlements under the Agreement provisions relied upon by the Organization in this case.

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Accordingly, we find that the Claimant received his relocation entitlements under the WJPA and deny the claim.

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 11th day of January 2011.