Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 42464
Docket No. SG-42765
16-3-NRAB-00003-140438

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of T. S. Geisert, for $118.65 Mileage allowance, one day's pay at his respective rate, and a transfer allowance of $800.00, account Carrier violated the Current Signalmen's Agreement, particularly Rule 32, when it refused to compensate the Claimant for his move to his new position after he had been displaced as a result of Carrier's abolishment of night and relief maintainer positions due to an organizational and operational change. Carrier's File No. 35-13-0023. General Chairman's File No. 13-011-BNSF-119-D. BRS File Case No. 14995-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.

Claimant was notified of his job abolishment on March 1, 2013, and of his displacement on March 8. He exercised his displacement rights on March 15. He sought benefits under Rule 32, but was denied. The Organization protested this decision, which the Carrier rejected on appeal. The claim was duly processed without resolution. As a result, the Organization presented the dispute to the Board for hearing and decision.

According to the Carrier, this claim was filed outside applicable time limits and therefore is not properly before the Board. In the event the Board does reach the merits, the Carrier maintains that Claimant's position was not abolished, meaning Rule 32 on Moving Benefits does not apply and he did not qualify for relocation benefits. It asserts the position still exists and was assigned to Ricky Frickson.

On March 1, 2013, BNSF issued abolishment notices for the remaining few Maintainer positions with night and relief schedules, since day shift Maintainers were capable of handling the duties. The Carrier insists this constituted a business fluctuation and does not fall within the Rule 32 language regarding operational or organizational change. It contends there was no rearrangement of territory, only a reduction in work. Further, it argues that Claimant moved prior to being displaced and was not required to move again.

The Carrier contends Claimant's email was not a proper request for relocation benefits because a Non-Salaried Employee Relocation Approval Form must be submitted.

The Carrier notes that Claimant took a vacation day on February 22, 2013 to move to Moorcroft, Wyoming. His position was not abolished until March 10. Claimant did not contact Manpower to learn what his options were until March 11. There is no way these facts support a necessary move in February, it asserts. As the Carrier sees it, he could have taken a position in Gillette, Wyoming near his residence when he exercised his seniority on March 15. Instead, he chose to displace to a position in Moorcroft. This was a voluntary exercise of seniority, so the applicable rule is 52, not 32. He moved before he was notified off his displacement. Further, the pay for moving must be applied to the day of the actual move, yet he moved before he requested moving pay. Claimant suffered no wage loss when he exercised his displacement rights to Moorcroft. As a result, he does not qualify for a days' pay.

The Carrier maintains the Organization belatedly attempted to amend the claim to assert that he was bumped. Since the reason for the job elimination was a reduction in freight traffic, the Carrier insists there was no organizational change. He was living in Gillette, reporting there and although he could have bumped a junior employee in Gillette, he chose not to.

The Organization notes that Claimant received notice on March 1 that his job would be abolished effective March 10. The abolishments were the result of a business decision addressing a reduction in the number of coal trains. In the Organization's assessment, slack business is most assuredly a reason for organizational change. It argues that Claimant's position was created by agreement between the parties, signaling operational or organizational impact; Award 21180 applies.

The Organization asserts that the Carrier's own statements and actions establish that these were organizational changes. He was free to exercise his seniority where he wanted and was required to change his residence because his position was abolished.

Rule 32. CHANGES OF RESIDENCE DUE TO TECHNOLOGICAL, OPERATIONAL OR ORGANIZATIONAL CHANGES states:

> **"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 employee shall be granted five (5) working days instead of 'two working days' provided in Section lO(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 $3,500 or 7 percent 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."**

Having reviewed the record, the Board is convinced that the evidence overwhelmingly establishes that the reason for the job abolishment in this case was a lack of work in that coal train traffic had diminished. Prior awards clearly establish that lack of work does not rise to the level of operational or organizational change within the meaning of Rule 32. As a result, the rule does not apply. This, in and of itself, is adequate grounds for denying the claim. However, it is also significant that there is no evidence in the record of an application being made by Claimant for the benefits he now seeks. Claimant sent the following message to the Carrier on April 12, 2013:

> **"Hello,**
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> **I was a maintainer on the Orin subdivision. I got bumped recently. My headquarters was Reno Junction. Reno Junction is 38 miles from Gillette, WY. I was living in Gillette, WY. I bumped to Moorcroft West maintainer job. I now live in Moorcroft, WY.**
>
> **Am I eligible for Rule 32 benefits? (The $800 part). My new territory is more than 30 miles from the last territory.**
>
> **Thanks,**
> **Travis Geisert**
>
> **P.S.**
> **Also could you maybe send me the link to the "Non-salaried relocation form" so that I can print, fill out the form and send it to my supervisor."**

This memo establishes that Claimant knew he needed to submit this form to the Carrier; there is no evidence that he ever did. He cannot now be allowed to seek by way of arbitration benefits for which he never applied.

Finally, Claimant had already moved to Moorcroft at the time of the job elimination he claims prompted the obligation for a day's pay. Since he had already relocated and his job choice was voluntary, he was ineligible for benefits under the applicable rule.

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 28th day of November 2016.