

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43783
Docket No. SG-43942
19-3-NRAB-00003-160724**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly Louisville & Nashville):

Claim on behalf of W.M. Lambert, III, for all Protective Benefits due him and for Relocation Benefits outlined in CSXT, account Carrier violated the current Signalmen’s Agreement, particularly CSXT Labor Agreement No. 15-036-07, when, on May 13, 2015, it changed the Nashville Dispatch Center from a five-person operation to a four-person operation, which created an adverse effect on the Claimant and entitled him to Protective Benefits that Carrier refused to compensate. Carrier’s File No. 2015-189842. General Chairman’s File No. 15-67-02. BRS File Case No. 15476-L&N.”

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.

Over the years of their bargaining relationship, the Carrier and the Organization have negotiated what are known as “protective benefits,” which are designed to ease the adverse consequences experienced by employees when they are displaced and/or forced to relocate as a result of a displacement—typically a loss of compensation and the costs of moving from one geographic work location to another as a result of a displacement. Protective benefits are available to employees only in limited circumstances, however, typically organizational changes that result in significant displacement for large numbers of employees.

At the time of the events that gave rise to this claim, the Claimant, W.M. Lambert, III, was assigned as an Electronic Signal Specialist (ESS) in the Carrier’s Huntington Dispatch Center in Huntington, West Virginia. This dispute arose on May 13, 2015, when the Carrier abolished the Vacation Relief ESS position at the Huntington Dispatch Center, reducing the ESS complement from five to four. The Vacation Relief position was held by senior ESS Robert Gibson, who displaced Chris McCloud, who in turn displaced Tim Cox, who displaced the Claimant on May 22, 2015. Although he had been employed by the Carrier since May 2005, the Claimant was the junior ESS at Huntington. After being displaced, the Claimant could not hold an ESS position. Initially, he exercised seniority to a temporary Line of Road Signalman’s position, until he was again displaced, effective June 22, 2015. Thereafter the Claimant could not displace to a local maintenance position. As a result, he ultimately displaced to a Signalman’s position on his former property, requiring him to relocate to Loyall, Kentucky. The record includes a statement from the Claimant detailing the costs to him of the displacement. He had accepted the ESS position in September 2014 knowing that the Carrier required him to remain in the position for a minimum of three years. The Carrier paid all of his relocation expenses from Kentucky to West Virginia. Claimant estimated that the costs of his moving back to Kentucky, which included the cost of breaking the lease on his rental apartment in Huntington, totaled roughly \$2100. Claimant’s new position as a Signalman resulted in a decrease in compensation of over \$3000 a month. The Claimant sought that amount for the remaining period of the three-year contract into which he and the Carrier had entered when he became an ESS in Huntington.

The Organization filed two claims on behalf of the Claimant, one on June 24, 2015, and a second on July 6, 2015, contending that he was entitled to protective benefits, including relocation costs, pursuant to the provisions of CSXT Labor Agreement #15-036-07. By letter dated August 18, 2015, the Carrier responded to both claims, denying

the July 6 claim in its entirety as a duplicate claim and denying the June 24 claim on the basis that Agreement 15-036-07 did not apply to the Claimant because it was directed at the Carrier's 2007-2008 reorganization of ESS positions throughout its territory, and the Claimant did not become an ESS or transfer into the Huntington ESS Dispatch Center until September 2014. The Organization filed an appeal on October 6, 2015, noting that it had filed duplicate claims in an effort to make sure that someone in authority in Labor Relations received the claims. According to the Organization, it had asked for information on how to file for protective benefits for four affected ESSs by e-mail May 25, 2015, and it had yet to receive a response. The parties met in conference on February 11, 2016. By letter dated May 13, 2016, the Organization notified the Carrier that it was forwarding the claim to the Grand Lodge for further handling. By letter dated June 30, 2016, the Carrier wrote to the Grand Lodge, stating first, that the two claims that had been forwarded by the Organization were duplicate claims and should be dismissed, and second, that it stood by its earlier determination that Agreement 15-036-07 did not apply to the Claimant.

The Organization contends that the Claimant suffered "adverse effects" as a result of the Carrier's transaction leading to his displacement and relocation. He is covered by the terms of CSXT Labor Agreement 15-036-07, which provides protective benefits for ESSs. The record establishes Claimant's loss in compensation as well as the estimated cost for him to move back to Kentucky from Huntington, and the claim should be sustained.

According to the Carrier, the Organization has not met its burden to show that the Claimant was entitled to protective benefits. The benefits of Agreement 15-036-07 pertained only to ESS employees assigned at Jacksonville, Florida, who were required to relocate into newly formed divisional offices in 2007-2008. They do not apply to the Claimant, who did not become an ESS until 2014.

The Board has previously established a two-part burden of proof for the Organization to show that an employee is entitled to protective benefits: (1) the first test is whether the Claimant has been placed in a worse position with respect to compensation and rules governing working conditions; and (2) the second test is whether the Claimant's worse position is the result of a transaction subject to protective benefits. *See, e.g.,* the Arbitration of the New York Dock Conditions, Docket No. 33388 (Hockenberry, 2003). There is no question but that being displaced from his ESS position in Huntington, West Virginia, placed the Claimant in a worse position with respect to his compensation, as well as forcing him to incur the costs of relocating out-of-state to the highest position his seniority afforded him.

The second part of the test is where the Organization has failed to meet its burden of proof. CSXT Labor Agreement 15-036-37 was negotiated in response to the Carrier's proposed reorganization of dispatch activities from a centralized location in Jacksonville, Florida, to six divisional offices located throughout its territory. The reorganization was projected to take place between approximately February 2008 and August 2009, and per paragraph 2 of the Agreement, was expected to result in the abolishment of fifteen ESS positions in Jacksonville, which would be redistributed throughout the Carrier's new and established dispatch centers. Protective benefits are addressed in paragraph 9. Subparagraph 9(b) states:

"Any employee determined to be a "displaced" or "dismissed" employee as a result of this transaction . . . shall within forty-five (45) days after having established "displaced" or "dismissed" status, be notified, in writing, by the Carrier (with copy to the General Chairman) of his monetary protective entitlement under this Agreement (Emphasis added.)"

The language "as a result of this transaction" limits the protective benefits negotiated by the Carrier and the Organization to employees "displaced" or "dismissed" as a result of the 2008 decentralization of dispatch operations out of Jacksonville, Florida, and into regional dispatch centers. The Organization has not shown that Agreement 15-036-07 applies to any transaction other than that one. Accordingly, the Board finds that the Organization has not met its burden of proof, and the claim 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 July 2019.