

## PUBLIC LAW BOARD NO. 2189

PARTIES ) BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS  
TO )  
DISPUTE ) GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Is Mr. D. Beeler entitled to moving expenses as that term is defined in Section 9 of Appendix III (New York Dock Conditions) when he opted to follow his position from the Detroit, Toledo and Ironton Railroad to the Grand Trunk Western Railroad as provided in Implementing Agreement "G" dated July 31, 1980?

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee respectively within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The dispute here at issue, as was found in Case No. 22 (Award No. 22) before this Board, concerns interpretation and application of the New York Dock Conditions and Implementing Agreements which the parties to this dispute had entered into in connection with the Carrier's acquisition of the Detroit, Toledo and Ironton Railroad (DT&I) as authorized by the Interstate Commerce Commission in Finance Docket No. 28250, effective June 24, 1980.

Although some basic and material facts differ, the parties make reference to a number of the same provisions of the New York Dock Conditions and the Implementing Agreements as had been set forth in their respective positions with respect to Case No. 22. In this regard, we believe no useful purpose would be served by our recording here again those same citations and arguments as had been advanced and referenced in the Board's review of the earlier dispute. However, since the instant dispute does in fact also call for interpretation and application of Section 9 of the New York Dock Conditions, we would note that Section 9 reads as follows:

"9. Moving expenses. - Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family

"and for his own actual wage loss, not [to] exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed within three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provision[s] of this section unless such claim is presented to [the] railroad within 90 days after the date on which the expenses were incurred."

In this dispute, the Claimant held a seniority date of June 9, 1967 in the former territory of the DT&I (now Seniority District No. 41) and was the regularly assigned incumbent of the position of General Accountant III (Payroll) at Dearborn, Michigan, when the Carrier, on September 25, 1980, served notice of its intention to transfer Claimant's position, along with sixteen other positions, from Dearborn to Seniority District No. 11 in Detroit, Michigan, effective November 3, 1980. Claimant, unlike the situation which prevailed with respect to the incumbent of the position transferred in Case No. 23 before this Board, elected to follow his position into Seniority District No. 11. Accordingly, effective November 3, 1980, Claimant was transferred along with his position and seniority date of June 9, 1967, from Seniority District No. 41 into Seniority District No. 11.

Subsequent to his transfer into Seniority District No. 11, Claimant made application for moving expenses pursuant to Section 9 of the New York Dock Conditions. The Carrier denied Claimant's application on the basis that he did not meet the criteria of having been "required to change the point of his employment as a result of the transaction" as provided for in said Section 9 of the New York Dock Conditions.

Basically, it is the Organization's contention that "when the Parties agreed to procedures in transfer by allowing the incumbent to follow his position or exercise his seniority in his current seniority district the parties did not deny him his benefits, but only recognized his contractual rights guaranteed him under the Working Agreement and Section 2 and Section 5 of the New York Dock Agreement." (Underscoring by the Organization) It submits that inasmuch as the Claimant's change in work location was the result of the transaction, and as such, placed

Claimant's work location in excess of forty miles from his residence, that he was entitled to moving expenses pursuant to Section 9 of the New York Dock Conditions.

As concerns the distance involved, and interpretation of the terminology "required" and "change in residence", the Organization directs attention to contract language to be found in a "NOTE" to Rule 4 of the Working Agreement. It reads as follows:

"NOTE: Under this rule a change in residence shall be considered 'required' if the new work location exceeds thirty (30) normal travel miles from the employee's place of residence on the date of change.

EXCEPTION: A change in residence shall not be considered 'required' if the new work location is located in excess of thirty (30) miles but is located no further than the distance previously traveled by the employee from his residence to his old work location."

In essence, it is the Carrier's position that Claimant's transfer from Seniority District No. 41 into Seniority District No. 11 was entirely of a voluntary nature and that he was not "required" by any rule or agreement to move with his position and therefore not required to move his place of residence as a result of the transaction. It thus maintains that Claimant did not meet two specific requirements of Section 9 of the New York Dock Conditions so as to be eligible to receive the moving expense benefits of that Section, namely, that the employee must be "required" to change his point of employment as the result of the transaction and must be "required" to move his place of residence as a result of the change in point of employment.

Upon reviewing the facts and arguments presented, the Board does not believe, as the Carrier contends and the Board found to exist relative to Case No. 22, that the transfer of Claimant from his home seniority district represented a voluntary exercise of seniority. In our opinion, there is a significant difference between an employee electing to remain with their position when notified that as the result of an authorized transaction their position is to be transferred, as opposed to an employee exercising seniority to a transferred position, as in Case No. 22. Here, in pursuance of Agreement "G", Claimant exercised the right to follow his position from Seniority District No. 41 to Seniority District No. 11. In this regard, we think that Agreement "G", recognizing the transferring of work and/or positions may require employee changes in places of residence, evinces an intent that employees exercising that right would be entitled to the benefit of moving expenses provided by Section 9 of the ICC-imposed New York Dock Conditions. Consequently,

it will be this Board's finding that the question posed to the Board in the Statement of Claim be answered in the affirmative.

AWARD:

Claimant is entitled to moving expenses as that term is defined in Section 9 of Appendix III (New York Dock Conditions).

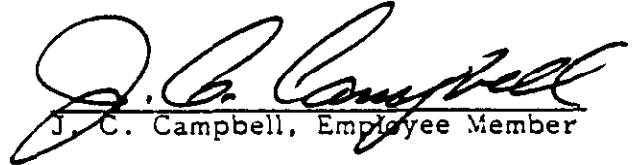


Robert E. Peterson, Chairman  
and Neutral Member



~~B. E. Proven~~, Carrier Member

R.W. BARRETT



J. C. Campbell, Employee Member

Detroit, MI

~~January~~, 1984

May 30