

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railway, Airline and Steamship Clerks,
TO) Freight Handlers, Express & Station Employees
DISPUTE) and
Central Vermont Railway Company

QUESTIONS (1) Did the Carrier violate the provisions of the Implementing
AT ISSUE: Agreement of December 14, 1971, particularly Section 2, (a), when it
required Mr. E. A. Lape, Agent, Bethel, Vermont, to exercise his
seniority to point in excess of thirty (30) mile radius defined as a
point requiring a change of residence?

(2) Shall the Carrier be required to restore claimant to his
protected rate and compensate him for wage loss subsequent to
September 26, 1978?

(3) Shall the Carrier be required to compensate claimant's travel
time and expenses for each day he is required to work at his present
location?

OPINION OF Carrier and the Organization entered into an Implementing Agreement
THE BOARD: on December 14, 1971 for the purpose of providing protection for
employees who might be adversely affected by the establishment of a
Carload Center at St. Albans, Vermont and attendant changes. Section 2 of that
Agreement provides:

Section 2: The employees affected by this implementation shall have
the following options:

"a) Exercise seniority rights in accordance with the Collective
Agreement to another available position not requiring a change
of residence.

They will not be compelled to exercise their seniority rights at
a point beyond their home location for a period of five years,
as prescribed in Paragraph 6 of the Washington Job Protection
Agreement of May 21, 1936.

"b) Exercise seniority rights in accordance with the Collective
Agreement to another position which does require a change in
residence.

"c) Elect to resign and accept a lump sum separation allowance
computed in accordance with the provisions set forth in Section
9 of the Washington Job Protection Agreement of May 21, 1936,
such separation to be computed as follows:

<u>Length of Service</u>				<u>Separation Allowance</u>			
1 year and less than 2 years				3 months' pay			
2 years	"	"	3 "	6 "	"	"	
3 "	"	"	5 "	9 "	"	"	
5 "			or more	12 "	"	"	"

Claimant herein had been the regularly assigned Agent at Bethel. Carrier sought and secured permission from the Vermont Public Service Commission to close its facilities at Bethel and Montpelier Junction and transfer the functions to the St. Albans Carload Center. The parties agreed that the 1971 Implementing Agreement would cover the affected employees. Effective September 29, 1978 the station at Bethel was closed and Claimant herein elected to displace the third trick operator's position at Montpelier Junction (27 miles from his home location). Claim was submitted for the difference between the protected rate of Claimant and the rate at Montpelier Junction (6¢ per hour) and was rejected by Carrier on the grounds that he did not exercise his rights to a position producing compensation equal to his protected rate - and such position was available to him at White River Jct., Vermont (34 miles from his home location).

On January 26, 1979 the station at Montpelier Jct. was closed and Claimant, under protest, displaced at White River Jct. resulting in the dispute herein. It is noted that at the time of the development of the Implementing Agreement, in 1971, there was system wide seniority for the Agent-Telegraphers.

Carrier relies in large measure on Award No. 266 of this Board as it interprets Section 6(a) of the WJPA. This argument rests on the reference to Section 6 of the WJPA in Section 2 of the 1971 Implementing Agreement. Petitioner, inter alia, argues that the reference in Section 2 was to Section 6(c) of the WJPA only. Further, the Organization argues that Award No. 266 is not consistent with the factual and contractual language of the instant case.

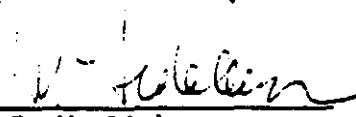
The issues involved in this dispute may be resolved without construing the applicability of the WJPA or of Award No. 266. The crux of this dispute is whether Claimant was forced to exercise his seniority to a position requiring a change of residence. The dispute falls into two parts: the move to Montpelier Jct. and later the move to White River Jct. With respect to the first move, it is clear from the handling on the property that the Carrier was aware that this was the only position available to Claimant within his "home location" limits. Thus, under the provisions of the Implementing Agreement, he should have received his protected rate. When Montpelier was closed and Claimant was forced to exercise his seniority to White River Jct., Carrier did not know whether or not this would require a change of residence. The facts indicate that there was a distance of 34 miles involved and it was on this basis that the Claim was pursued. However, the record and the claim itself indicate that Claimant was not in fact required to change his residence in order to fill the position at White River Jct. This Board has considered this precise situation in Award No. 271. In that Award we said that by not moving the Claimant had transformed the (thirty mile question) of whether or not he was required to move from the theoretical to the practical. Further we said:

"Since Claimant did not move, he properly exercised his seniority rights to secure another available position upon being displaced, which did not require his change in residence. He is therefore entitled to continuation of his guaranteed compensation."

With respect to the request for travel time and expenses contained in paragraph (3) of the question, we have ruled on that precise issue in Award 368: the Board has no jurisdiction to make such a determination.

AWARD

Question No. 1 is answered in the negative.
Question No. 2 is answered in the positive.
Question No. 3 is answered in the negative.



I. M. Lieberman
Neutral Member

Dated: 26.80