In the Matter of Arbitration

Allied Services' Division Transportation Communications Union	)	
	)	**Special Board of Arbitration**
vs	)	**NYD-217 Case 1 - Seven Claims**
	)	
Southern Pacific Transportation Company Union Pacific Railroad Company	)	

Before

Edward L. Suntrup, Arbitrator

Appearances

For the Company

Dean D. Matter	-	General Director, Labor Relations

For the Union

T. P. Stafford	-	President, Allied Services Division
Phillip T. Trittel	-	Assistant to the President

Background

The U.S. Surface Transportation Board (STB) approved the merger of rail carriers controlled by the Union Pacific Corporation (UP) and the Southern Pacific Rail Corporation (SP) in September of 1996 under Finance Docket No. 32760.[1] In so doing the STB imposed New York Dock Railway --- Control --- Brooklyn Eastern District (NYD) conditions adopted by the former Interstate Commerce Commission (ICC) in Finance

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[1]These carriers include the Union Pacific Railroad Company, the Missouri Pacific Railroad Company, the Southern Pacific Transportation Company, the St. Louis Southwestern Railroad Company, SPLSL Corporation, and the Denver and Rio Grande Western Railroad Company.

Docket No. 28250, 360 ICC 60, 84-90 of 1979 on the merger.[2] In accordance with NYD the Carrier served notice on September 16, 1996 to the Allied Services Division of the Transportation Communications Union (ASD-TCU) of its intent to consolidate forces represented by this union throughout the newly merged SP-UP system. The parties thereafter entered into negotiations in accordance with Article 1, Section 4 of NYD which states the following, in pertinent part.

> **Article 1**
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> **4.** Each railroad contemplating a transaction which is subject to these conditions which may cause dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days' written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.
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> Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces for all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this Section 4. If at the end of the thirty (30) days there is a failure to agree, either party to the dispute may submit it

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[2]Carrier Exhibit A. The acronym, NYD and the phrase, New York Dock Conditions are used interchangeably in this Award. When the parties' Implementing Agreement is referenced it is called NYD-217.

for adjustment in accordance with the following procedures.....

A Memorandum Agreement (NYD-217), affecting some 1,800 clerical employees represented by the union, was signed by the company and the union on December 18, 1996. This Agreement has appended to it Letters of Understanding, Attachments, as well as a list of Q&As mutually agreed upon by the parties . The set of Q&As, commonly appended to Implementing Agreements in this industry, was developed by the parties to assist them in understanding and applying the provisions of NYD-217.[3]

Provisions framed by the parties in NYD-217 permitted the Carrier to transfer work and positions between the SP and the UP upon giving appropriate notice to the employees involved. Employees thus affected were covered by provisions found in NYD and/or in the newly negotiated NYD-217 itself. In this respect, the latter states the following.

> **Article I**
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> The labor Protective Conditions as set forth in the New York Dock Conditions which, by reference hereto, are incorporated herein and made a part of this Agreement shall be applicable to this transaction.
>
> Employees affected as a result of the transaction pursuant to this Agreement will be provided an election of available employee protective benefits as set forth in Article I, Section 2 of New York Dock Conditions.

Article I. Section 2 of NYD guarantees that rates of pay, rules, and other working conditions would remain preserved under "...applicable laws and/or existing collective

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[3]This full set of documents is found in TCU Exhibit A and Carrier Exhibit B.

bargaining agreements..." unless changed by future agreements or "...applicable statutes...".

NYD-217 then states, at Article I, the following.

Article I

Employees affected as a result of the transaction covered by this Agreement and who elect to accept work at another location will be provided with protective benefits as set forth in Article I, Sections 2 (see above), 9 and 12 of New York Dock Conditions, or the moving benefits outlined in Attachment "B".

Article I, Sections 9 and 12 of NYD operationalize benefits to be received by employees with respect to moving expenses and losses from home removal. Attachment "B" of NYD-217 states the following.

Attachment "B"

Section 1

(a) An employee who is required to change place of residence, as defined below, in the exercise of seniority as a result of a transaction under this Agreement who, on the date notice of transaction is issued, owns their home or is under a contract to purchase a home, shall be afforded one of the following options which must be exercised within fifteen (15) days from the date affected or assigned to a position at the new work location:

Option 1: Accept the moving expense and protection from loss in sale of home benefits provided by the terms of the New York Dock Conditions and Section 2 or, in lieu thereof, any property protection agreement or arrangement.

Option 2: Accept a lump sum transfer allowance of $20,000.00 in lieu of any and all other moving expense benefits and allowances provided under terms of the New York Dock Conditions and this Attachment "B".

NOTE: A "change of residence" as used in this Agreement shall only

be considered "required" if the reporting point of the affected employee would be more than thirty (30) normal route miles from the employee point of employment at the time affected.

(b) An employee referred to above who does not own a home or is not obligated under contract to purchase a home shall be afforded one of the following options which must be exercised within fifteen (15) days from date affected or assigned to a position at the new work location:

Option 1: Accept the moving expense benefits provided by the terms of the New York Dock Conditions and Section 2 or, in lieu thereof, a property protection agreement or arrangement.

Option 2: Accept a lump sum transfer allowance of $10,000.00 in lieu of any and all other moving expense benefits and allowances provided under terms of the New York Dock Conditions and this Attachment "B".

(c) If an employee holds an unexpired lease of a dwelling occupied as his/her home, the Carrier shall protect such employee for all loss and cost of securing the cancellation of said lease as provided in Sections 10 and 11 of Washington Job Protection Agreement in addition to the benefits provided in this Section.

Section 2

An employee electing the moving expense benefits under the New York Dock Conditions shall receive a transfer allowance of Two Thousand Five Hundred Dollars ($2,500.00). In addition, the provisions of Section 9, Moving Expenses, of the New York Dock Conditions which provides "not to exceed 3 working days" will be increased to "not to exceed 5 working days".

Section 3

An employee who voluntarily transfers under terms of this Agreement, and who is required to change place of residence and elects the lump sum transfer allowance in lieu of any and all other moving expense benefits and allowances, shall be accorded on assignment a special transfer allowance of $5,000.00 in consideration of travel and temporary living expenses while undergoing the relocation. However, such employee will not be permitted to voluntarily exercise seniority on a position which again will require a change of residence outside the new point of employment for a period of twelve (12) months from date of assignment, except in

cases of documented hardship and then only by written agreement between Labor Relations and the respective General Chairman/President.

Employees affected by a transaction are given options under Article III, Section 3 of NYD-217 as follows.

Article III, Section 3

The Carrier will determine the number of positions to be relocated or abolished at a given location as the result of the implementation of a transaction. Advertised positions to be established at the new location will be awarded in accordance with Letter of Understanding No. 5. Employees on the affected roster/zone will be given the simultaneous options of:

A. Receiving severance under the separation program (Attachment A)
B. Exercising seniority.
C. Relocating to accept a clerical position at a new location.
D. Entering voluntary furlough status (benefits suspended).

Employees will be asked to rank each option in order of preference. The option of each employee will be honored in seniority order until all the relocated positions have been filled or there are no surplus of employees on the roster/zone available to fill the relocated positions...

There are seven Claimants in this case. There is no dispute that all were affected by a transaction as defined by NYD,[4] result of the UP-SP merger. All of the Claimants exercised seniority to Hearne, Texas under option B. of Article III, Section 3 of NYD-217 when the Carrier initiated a "...rearrangement of forces..." under Article I, Section 4 of NYD. The Claimants had all been headquartered outside a 30-mile radius from Hearne and, according to the union, were eligible for benefits under Article III, Section 5 of NYD-217. These latter provisions state the following.

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[4]See (1.) Definitions (a.) "Transaction".

Article III, Section 5

> An employee required to change place of residence as a result of election to follow a position will be entitled to the moving benefits set forth in Attachment "B".
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> A "change of residence" as used in this Agreement shall only be considered "required" if the reporting point of the affected employee would be more than thirty (30) normal route miles from the employee point of employment at the time affected.
>
> If an employee receives a monetary relocation allowance and does not report to his/her newly assigned work point on the assigned date, he/she shall forfeit his/her accumulated seniority and be treated as though he/she had submitted a voluntary resignation, except in cases of illness or other physical disability or unless prior arrangements have been made in writing with the new supervisor.

When the seven employees opted to exercise seniority to Hearne, Texas they did so from one of three locations: Houston, Beaumont or Dayton, Texas. All three locations are more than thirty miles from Hearne.[5]

The seven employees applied for benefits under NYD-217, Attachment "B". After the Carrier conducted an audit NYD-217 benefits were denied totally for five of the Claimants for the move to Hearne. These five Claimants have never received any compensation under any form from the Carrier. In the other two cases, the Claimants were paid $25,000 for the Hearne, Texas move. But since they were both bumped shortly after they accepted the Hearne assignment, took dismissal allowance, and then were called to work to St. Louis, the Carrier advised both to use the payment already received

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[5]Houston, Dayton and Beaumont, Texas which are the locations where the Claimants were working when they exercised seniority to Hearne, are 120, 150 and 205 miles, respective, from Hearne. The Claimants either lived in these cities or in the urban confines of these cities. See Map (TCU Exhibit B).

for the Texas to St. Louis, Missouri move since the Carrier contended that these two Claimants had never established residence at Hearne, Texas in the first place. The genesis of the instant case centers on the Carrier's refusal to pay moving allowances to all seven of the Claimants after they had all exercised seniority, and actually went, to Hearne, Texas.

The record shows that the Carrier had allowed moving allowances for some employees relocating to Hearne, Texas. The Carrier's denial of benefits in the seven cases is based on its contention that the Claimants failed to demonstrate that they had ever changed their places of residence after exercising seniority to Hearne. According to the Carrier, NYD-217, Attachment "B" benefits should only be given to employees who "...actually relocate and change their place of residence...".

It is the union's contention, in the claims it filed on behalf of each of the employees here at bar, that benefits should have been granted to them under NYD- 217, Attachment "B" after they exercised seniority to Hearne.

After the union filed the claims, and absent settlement on property, the parties brought the claims to arbitration. The parties agreed to combine the claims filed for all seven of the employees under this one case. The issue for arbitration, therefore, is the following.

Issue

Did the Company violate the terms of the NYD-217 Implementing Agreement when it refused to compensate Claimants D. Colbert. A. Galentine, C. Hemphill,

T. Krolczyk, R. Lee, N. Norfleet, and E. Perrine their Lump Sum moving benefits outlined in Attachment "B" of the Agreement?

If the answer to the above question is in the affirmative, shall the Carrier now be required to pay the Claimants listed above their Lump Sum Moving Benefits as so claimed?

According to the union, relief to be paid in each of the individual cases, if the answer to the question at issue is answered in the affirmative, is the following.[6]

Name of Claimant	Relief Requested
Donald K. Colbert	$ 15,000
A. W. Galentine	$ 15,000
Carolyn E. Hemphill	$ 25,000
Tony J. Krolczyk	$ 25,000
Richard Lee, Jr.	$ 15,000
Neil A. Norfleet	$ 15,000
E. K. Perrine	$ 15,000

Additionally, the union requests that the Carrier pay "...any cost (incurred by the Claimants) related to an unexpired lease of a dwelling...", as provided in Sections 10 and 11 of the Washington Job Protection Agreement as stated in Section 1 (c) of Attachment "B" of NYD-217.

Discussion

This is not a class action case. After review of the record before him the arbitrator concludes, as does the company in its Brief, that the request for NYD-217, Attachment "B" benefits by each of the Claimants must be considered separately, on its merits, and

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[6] TCU Submission @ p. 33.

that "...eligibility for benefits turns upon the facts in each individual case...".[7] This conclusion is not disputed by the union. The union discusses each of the Claimant's claims separately in its Brief[8] and by means of supporting Exhibits.

This is a contract interpretation case. The arbitrator will discuss first of all, therefore, the parties' respective arguments with respect to the contract interpretation and construction issues related to NYD-217. The arbitrator will then discuss each of the employee's claims separately, ruling on the parties' arguments as they relate to the facts of each claim accordingly.

Arguments

The union's arguments in this case will be reviewed first. It is the position of the union that the Carrier violated the provisions of NYD-219 and the agreed-to answers to certain questions attached to that Agreement when the Carrier did not grant all of the Claimants Attachment "B" benefits after each of them exercised seniority to Hearne, Texas. The Q&As pertinent to this case, according to the union, are the following.

> Q. An employee does not accept a position to follow work to a new location and decides to exercise a displacement, however, the only position left requires a change of residence. Is the employee entitled to the same benefits outlined in the UP-SP Implementing Agreement No. NYD-217 as if he/she had followed the work to a new location, i.e. benefits of Attachment "B"?
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> A. Yes.

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[7]Carrier's Submission @ p. 11.

[8]TCU Submission @ pp. 4 through 25.

Q. If an employee exercises seniority onto a position on his/her seniority district and receives moving allowance under the Agreement and is later displaced and is required to move again, will that employee receive moving benefits again under the UP-SP Implementing Agreement No. NYD-217?

A. Yes, if the required move is the result of a transaction under NYD-217.

The union argues that all of the employees involved here had to change their places of residence. But for how long? According to the union, that is not a determinative factor in the interpretation of NYD-217 benefits. The union notes that according to the company, the employees should not receive moving expenses because their move to Hearne, Texas did not require a "...change(..) in their place of residence on a permanent basis...".[9] The union argues that this interpretation of NYD-217 is not correct.

The union further argues that the parties were aware of the problem of multiple changes of residence by employees which could result from the rearrangement of forces after the UP-SP merger. The union already had experience with such circumstances off the earlier SP/DRGW merger. This is why the parties addressed this issue in the Q&As cited in the foregoing, according to the union. The union argues that the company is now trying to back off from its obligations under NYD-217 by arguing that things like short tenure (in a position), short leases, no registered phone in the name of the transferring employee, and so on are reasons for denying moving benefits.

According to the union, it was not the fault of the Claimants to this case if they got

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[9]TCU Submission @ p. 29.

bumped a short time after they exercised seniority to Hearne, Texas from the location of their prior assignments. In this respect, the union states the following:

> "These Claimants did everything they could to try to establish a permanent residence (in Hearne, Texas) only to get bumped before they completed attaining utilities, phones, etc. Some took the only available apartments because of time constraints for reporting to their positions. Others had the intention of maybe finding another apartment or residence in a better location closer to Hearne, Texas. Most of these Claimants did not receive the $5,000 special transfer allowance to which they were entitled while undergoing relocation. They were required to incur expenses without an assurance that the Carrier would abide by the Agreement...The Carrier failed to abide by their part of the Agreement...".[10]

The union then discusses specific circumstances. First, there is the issue of sequential moves. Three of the Claimants to this case (Colbert, Galentine, and Norfleet were involved in two moves.[11] According to the union, if both moves involve a transaction these employees should have been paid twice ... "...(h)owever costly..." this might be to the Carrier. According to the union, the Carrier "...cannot deprive these Claimants of negotiated benefits regardless of the number of times an employee is required to move...". Secondly, the union states that the Carrier has been inconsistent in its payment of moving expenses. Three other employees had, in fact, according to the union, received lump sum moving expenses even though they had not met the Carrier's tenure criteria. In all three instances, these employees had, however, taken separation pay

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[10]TCU Submission @ p. 30.

[11]There is no dispute that Colbert, Galentine & Norfleet were properly recalled to work to St. Louis, Missouri, from their original points of work, somewhat shortly after they were quickly bumped after going to Hearne, Texas. Claimant Lee is a special case. He is disputing his recall to St. Louis, after being bumped at Hearne, in a separate claim. Lee has never moved to St. Louis. (See Carrier's Exhibit R @ pp. 10-12 attached to this case.)

as a second option. Thirdly, the union argues that information required of an employee affected by a transaction in order to receive lump sum moving expenses under NYD-217 was two pieces of evidence: one which proved home ownership, and the second which was a signature on an Election of Benefits' form certifying that he or she was eligible for the benefits. The process was simplified, according to the union, because the Carrier "...did not want to hassle about moving issues...(which was) the purpose of Lump Sums outlined in the Implementing Agreement...".[12] But in the case of the Claimants to this case, according to the union, the company always appeared to want more information beyond the two pieces of evidence cited above. According to the union, the company even generated a new form called the "Request for Information Pertaining to Application for Relocation Benefits" which the union took exception to.

In conclusion the union argues that:

> "These employees have attempted to the best of their ability under the circumstances involved in these cases to establish residences in the Hearne, Texas area. The documentation furnished by each Claimant clearly proves that each was legitimately attempting to relocate and establish a residence in the Hearne, Texas area. They were bumped through no fault of their own and had no control over the duration of their stay on the positions they occupied at Hearne, Texas. The Carrier must not be allowed to deny the...Claimants these negotiated moving expense benefits."[13]

According to the Carrier, on the other hand, each of the Claimants to this case chose option B. of Article III, Section 3 of NYD-217 as their first choice. This option B

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[12]TCU Submission @ p. 31.

[13]TCU Submission @ p. 33.

only means "...fully exercising (or exhausting) SP seniority...". It does not necessarily mean a relocation although exercising option B. could result in a change of residence. It does not have to. But it could. Further, the exercise of option B. does not mean relinquishing seniority on an old roster and taking "...a new clerical position with 'dovetailed' seniority on a completely new seniority roster...".[14]

According to the Carrier, it is option C. of Article III, Section 3 which deals with relocating to accept a new clerical position on a dovetailed seniority roster at a new location.

After making this distinction the Carrier then argues that the same standards should apply to a change of residence as apply to a relocation albeit employees choosing option B. of Article III, Section 3 in this case are not, in fact, relocating. But they could be changing their place of residence.

The issue then, according to the Carrier, is whether the seven employees here ever did change their place of residence after exercising option B. To answer this question, according to the Carrier, it is necessary to establish criteria which can be used to determine whether "...an employee has changed his/her place of residence...". Then it remains to simply apply these criteria to the cases of each of the Claimants.

The Carrier states that the parties should be able to stipulate the following in this case.

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[14]Carrier's Submission @ p. 5.

(1) Each of the seven Claimants exercised seniority and displaced to clerical positions which were in excess of 30 miles from their previous headquarters point.

(2) Each of the Claimants exercised SP seniority to SP clerical jobs (at Hearne) and did not relinquish SP seniority in order to move to the UP.

(3) Each of the Claimants contend that they changed their place of residence.

If the Claimants' contention # (3) is correct, according to the Carrier, then they are eligible for moving expenses and related benefits in accordance with Section 1(a) of NYD-217.

But, according to the Carrier, the question then becomes the following: what does a change of residence mean?

To answer this question the Carrier references arbitral precedent in this industry as follows.

Award 220 of a Special Agreement Board off the former CN&W concluded, in 1992, that change of residence can be determined by whether such change was "temporary" or "permanent", and by looking at the "...intention of the transferred employee...".[15] That Award concluded, in citing also earlier Award 210 of that same Board, that if there is sufficient evidence that the change in residence was temporary, then moving benefits should not be paid.

Award 18 of PLB 3399 off the SP also addresses the question of change of residence. It concludes, after citing the "...reputable authority..." of earlier Awards 219 of

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[15]Carrier's Submission @ p. 8 citing Carrier's Exhibit H @ p. 5.

PLB 1186, and 6 of PLB 3096, that "...temporary commuting arrangements.." do not qualify as a change of residence. According to Award 18 of PLB 3389, "...renting a motel room for a few weeks..." would not "...support a claim for a transfer allowance..." under the Agreement at bar in that case.[16]

Along these same lines, Award 17 of PLB 4561, which was issued in 1992 and which was also off the UP, concluded that several rental checks are insufficient proof of a..." change of residence...". In Award 16 of that same Board the referee concluded that proof of purchase of a residence (assuming it was a bona fide transaction) is sufficient to show a change of residence and is sufficient for the Claimant, in this latter case, to have been eligible for relocation benefits.[17]

Award 7 of PLB 3096 held, in denying relocation benefits in that case, that "...a person establishes a residence when she or he takes all the overt measures that express an intent to establish a permanent home..." and that renting an apartment and commuting to one's home in another location is not sufficient proof that a residence has been established in the new location.

Award 1 of PLB 4792, also off the ICG as was Award 7 of PLB 3096 cited in the immediate foregoing, concluded that if an employee physically moves to a new location, but "...with intent to maintain their principal place of residence at the original home...", such employee cannot be said to have changed their place of residence. This same Board

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[16]Carrier's Submission @ p. 9 citing Carrier's Exhibit I @ p. 3.

[17]Carrier's Submission @ p. 9-10 citing Carrier's Exhibits J & K.

also denied relocation benefits in Award 2 because the employee could not show that he ever intended to change his place of residence.[18]

In conclusion, after citing these Awards, the Carrier argues as follows.

> "NYD-217 requires an employee to change their place of residence in order to be eligible for the moving benefits found therein. Merely 'pretending' to change one's place of residence does not grant the relocation benefits provided by the Agreement. If it had been the intent of the parties to allow moving benefits for these employees who temporarily change their place of residence, there would have been no need to give homeowners a higher level of benefits than those benefits granted to renters. Homeowners certainly would not have incurred greater expenses in moving to a location for several months than renters...It is the Carrier's position that each of the seven (7) Claimants in this case failed to demonstrate that they changed their place of residence...(after they exercised seniority to Hearne, Texas from their prior work points)".[19]

Discussion & Rulings

A review of the record in this case shows that six of the Claimants, after exercising seniority to Hearne, were bumped quite quickly after arriving there and then went on dismissed status. Four of them were subsequently recalled to work at St. Louis, Missouri on October 5, 1998. One of the four who was recalled to St. Louis is disputing this but that is a separate issue which has no bearing of this particular employee's request for moving benefits to Hearne, Texas from Houston in this case. Two of the seven employees remained on dismissed status as of the hearing date of this case. The seventh employee moved to Hearne in August of 1998, was quickly bumped, and then opted for separation

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[18]Carrier's Submission @ pp. 10-11 citing Carrier's Exhibits L, M & N.

[19]Carrier's Submission @ p. 11-12.

pay under NYD-217. Two of the seven did receive lump sum moving benefits after exercising seniority to Hearne, Texas and then were instructed by the Carrier to use these benefits for a Texas to St. Louis move when they were recalled to the latter point after a very brief tenure at Hearne. The other five employees received no financial benefits, to date, for their exercise of seniority to Hearne.

There are a number of different ways in which the claims of these seven employees could be grouped, for analysis purposes, in this case. But after complete review of this issue the arbitrator concludes that grouping the cases one way or another would not be particularly advantageous nor helpful in framing rulings on the merits of the claims themselves. The facts associated with each of the claims are somewhat idiosyncratic although all of the claims do have a common feature. That common feature is that in all of the cases the employees' tenure at Hearne, Texas, after they exercised seniority to that point, was very brief.

The arbitrator will rule first of all on the claims of the three employees whose cases center uniquely on the Hearne move and who thereafter, after they were bumped, either took a separation allowance or remain on dismissed status. The arbitrator will then rule on the four additional claims by the employees who were called to St. Louis after being bumped at Hearne. Proceeding in this manner is but an analytical convention. Ruling on each claim will hinge on the merits of each case.

(1) Rulings on the First Three Employees Who Took a Separation Allowance and/or Are on Dismissed Status.

(a) The Claim of Carolyn E. Hemphill

Claimant Hemphill was displaced on August 22, 1998 from her assignment at the Intermodal Ramp in Houston, Texas. She exercised seniority to Hearne, Texas and trained on a position there on August 22-25, 1998. She laid off sick on August 26, 1998. Claimant Hemphill was displaced at Hearne on August 26, 1998. She effectively worked at Hearne for the four days she was in training, and took off sick one additional day. She then elected to take separation pay of $75,000 in accordance with Attachment "A" of NYD-217.[20] This Claimant made application for Attachment "B" lump sum moving benefit of $25,000.

According to information of record the Claimant signed a six month agreement to rent a residence in Hearne. The rental contract ran from August 20, 1998 through February 19, 1999 with rent to be paid to a certain person living in Spring, Texas. The contract states that a full month's rent of $300.00 was "...due and payable no later than 9-5-98...". The Claimant also gave the Carrier a short, hand written document wherein she states that she used her personal truck to move her bedroom suite, portable TV, clock radio, microwave and personal effects to Hearne from her home after she exercised seniority to Hearne. Utilities were never put in the name of the Claimant albeit the lease

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[20]Attachment "A" of NYD-217 is not cited here because is it not directly germane to the issues in this case. Claimant Hemphill received $75,000 because she had over 20, but less than 25, years of seniority.

she allegedly signed states that the utilities were to be paid by the renter.

A review of the record in this case shows the following. The address of the alleged landlady who owned the leased property was, in fact, the address of a relative of the Claimant to this case. Further, since the rent was not due until September 5, 1998 there is no evidence that any money was ever exchanged or that an rent was ever paid by the Claimant. The arbitrator is confronted, in this case, with the anomaly of an employee claiming to have established an address at a point which is thirty miles or further from her home location: but there is no evidence that any rent had even been paid and/or was even due during the Claimant's brief tenure at Hearne. Further, the address where the rent was ultimately supposed to be paid was an incorrect address. The arbitrator also observes that the lease agreement was signed by the owner of the property. This was a certain "Estella Dubose". But no such person exists. The utilities at the property allegedly rented by the Claimant were in the name of a certain "Estella Duboise".[21] Is the arbitrator to believe that the owner of the property did not know how to spell her name when she filled out and signed the lease agreement? A more credible interpretation of the alleged rental agreement is that whoever filled it out did not know how to spell the name of the owner and forged her name. The Claimant states that she moved some furniture to Hearne from her home in Houston. She may have. But there is no clear indication where she ended up putting that furniture. Unless she had the extraordinary situation, which the arbitrator

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[21]See and compare TCU Exhibit Z and Carrier's Exhibit Q @ p. 4.

arbitrator finds less than credible, of a landlady allowing her to move furniture into a residence long before any rent was paid. The Organization argues, in this case, that it was not necessary for the Claimant to have established a permanent residence in Hearne in order to have been eligible for Attachment "B" benefits. On basis of the evidence of record it is far from clear that the Claimant established any residence during the four days in August of 1998 that she worked at Hearne, much less a permanent one. Precedent established by Award 220 of the Special Board off the CN&W, and Award 219 of PLB 1186, Award 6 of PLB 3096 and Award 18 of PLB 3399 applies here.

Ruling

Upon the basis of the full record before him the arbitrator rules that the claim for lump sum moving benefits by Claimant Hemphill under Attachment "B" of NYD-217 to Hearne, Texas in August of 1998 should be denied.

(b) The Claim of Tony J. Krolczyk

Claimant Krolczyk was displaced on December 17, 1998 at Houston, Texas. He exercised seniority to Hearne, Texas, effective December 22, 1998. Claimant Krolczyk trained for five days while at Hearne, was paid for four holidays (Christmas eve and Christmas and New Year's eve and New Year's day) and took two additional personal leave days while there. He was displaced at Hearne on January 2, 1999. Thereafter he became a dismissed employee under NYD and remained in that status as of the hearing on his claim in this case. On December 22, 1998 employee Krolczyk requested homeowners lump sum of $25,000 in relocation benefits.

There is a document in the record of this case showing that the Claimant signed an

apartment lease on December 27, 1998 for an apartment at 7 Patinka, Hearne, Texas. It was a month to month lease for $425.00 per month, with a three month minimum, with a security deposit of $425.00. There is in the record a letter under the letterhead of White & Associates, Real Estate/Insurance which states that the Claimant forfeited the security deposit because he had not given a thirty day written notice prior to surrendering the property. This letter is dated August 19, 1999. It is signed by a certain Bradley E. Ely whom the Claimant states "...works for White & Associates...". The check is made out to Bradley E. Ely.

There is an anomaly in the record with respect to the Claimant's Houston address.[22] It is not clear, from the record, whether his address there is 171 Dogwood Trail, New Caney, Texas or whether it is 10154 Scotsbrook, Houston, Texas. Employee Krolczyk claims it is the latter, but there is much evidence that it is really the former. This evidence includes a cashed check with the former address on it for the rental deposit in Hearne, as well as consolidated tax statement which appears to be from the tax assessors office.[23]

But irrespective of where the Claimant lived while in Houston prior to exercising seniority to Hearne, the evidence on Hearne shows that the Claimant only had to be physically present in Hearn for five days of training. Although he did sign a lease on

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[22]Proof of ownership when requesting a "homeowner's" benefit has never been established with certainty in this case. The deed provided is obscure, at best, and the tax bill has been altered.

[23]See Carrier's Exhibit T (complete) as well as TCU Exhibits FF through LL. On one statement the Claimant simply scratches off the address on the assessor's statement and replaces it with another.

December 27, 1998 there is no evidence that other measures were taken to establish residence in Hearne for what must have been the three additional days, after that point, that the Claimant trained at Hearne after signing the lease.[24] There is no evidence that utilities were ever hooked up nor paid. There is no evidence that phone service was established. Claim that a cell phone was used is not supported by any evidence of a phone bill for such having been paid. There is insufficient proof here that the Claimant ever established any residence in Hearne, Texas after he exercised seniority to that point and the Board will rule accordingly. Precedent established in Award 220 of the Special Board off the CN&W, Award 219 of PLB 1186, Award 6 of PLB 3096 and Award 18 of PLB 3399 apply here.

Ruling

Upon the basis of the full record before him the arbitrator rules that the claim for lump sum moving benefits by Claimant Krolczyk under Attachment "B" of NYD-217 to Hearne, Texas in December of 1998 and January of 1999 should be denied.

(c) **The Claim of E. K. Perrine**

Claimant Perrine was displaced on her position at Beaumont, Texas on May 21, 1999. She exercised seniority to Hearne, Texas effective May 26, 1999. On June 2, 1999 Claimant Perrine was displaced at Hearne. She could no longer hold a position on her seniority district, therefore, she became a dismissed employee and was drawing a

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[24]A review of the December, 1998 calendar shows that the only training days the Claimant could have worked while starting on December 22, 1998 were the 22nd and 23rd and then three days during the week of December 27, 1998. In either case the Claimant would not have been required to have been in Hearne, starting the week of December 27, 1998, more than three days.

dismissal allowance when her claim was heard by the arbitrator. Claimant Perrine claimed renter's benefits of $15,000 for her move to Hearne, Texas from Beaumont and a transfer allowance of $5,000.

A review of the record shows that Claimant Perrine signed a rental agreement on May 22, 1999 in College Station, Texas. This latter town was some distance from Hearne because, this Claimant states, it was difficult to find housing in Hearne. She also submitted a $45.00 bill for a rental trailer, a receipt from the College Station utility company which was sent to her at a Houston, Texas address and a cell phone bill which was sent to the College Station address.

The Claimant was assigned to Hearne, after she exercised seniority there, for seven calendar days. Although the Claimant did sign a lease for an apartment in nearby College Station there is no evidence that she actually established residence in or near Hearne, Texas in accordance with the reasonable intent of Attachment "B" of NYD-217. The Claimant certainly appears to have been making preparations to change residence, but there is no evidence that she actually did so. The fact that one month of a cell phone bill was sent to the apartment address in College Station could have a number of explanations, none of which warrant conclusion that the Claimant had established a residence at there. The rule of reasonableness, applied to this case, warrants conclusion that the Claimant's work tenure at Hearne was of such brief duration that the Claimant did not have any reasonable opportunity to change residence to or near that location. Precedent established by Award 220 of the Special Board off the CN&W, Award 219 of

PLB 1186, Award 6 of PLB 2096 and Award 18 of PLB 3399 applies here.

Ruling

Upon the basis of the full record before him the arbitrator rules that the claim for lump sum moving benefits and the transfer allowance by Claimant Perrine under Attachment "B" of NYD-217 to Hearne, Texas in May and June of 1999 should be denied.

(2) Rulings on the Second Four Employees Who Were Recalled to St. Louis

(a) The Claim of Donald K. Colbert

Claimant Colbert was displaced on June 26, 1998 at Dayton, Texas. He then exercised seniority to Hearne, Texas and reported for duty there on July 15, 1998. Employee Colbert elected for lump sum moving benefits as a home owner after exercising seniority to Hearne and was paid $25,000 by the Carrier. He was displaced at Hearne on July 19, 1998 and then became a dismissed employee. He was paid a dismissal allowance under NYD until October 5, 1998 at which time he was recalled to work at St. Louis, Missouri.

At issue here is whether this Claimant should have been paid moving benefits from Dayton to Hearne. When Mr. Colbert moved to St. Louis in October of 1998 the Carrier advised him to use the payment of $25,000 for the move from Texas to St. Louis as his lump sum moving allowance. An additional claim for $15,000 filed by Mr. Colbert for alleged move from Hearne to St. Louis, Missouri was denied.

Did employee Colbert ever establish a residence in Hearne, Texas during his five day tenure there? When Mr. Colbert filed his election of benefits form he presented

documentation to the Carrier which showed his owner's address at 3970 Chaison Street, Beaumont, Texas.[25] Owner's address is listed under the name of Donald K. Colbert Sr. and his wife, Linda Colbert. The apartment lease contract which the Claimant signed on 7-16-98 at Hearne, Texas after exercising seniority to that point states that he will be the only occupant of the apartment.

When the Claimant vacated the apartment in Hearne after having put a $100.00 deposit down on it the forwarding address is his home residence in Beaumont, Texas.[26]

On October 19, 1998 the Claimant wrote to his union representative that he wanted to file a "...claim for moving expenses for move from Hearne, Texas to St. Louis, Mo. (because he)...was renting in Bryan, Texas near Hearne, Texas from July 17, 1998 until October 31, 1998...".[27] Such statement is not consistent with either the Vacate Report from the apartment owner which was sent to the Claimant only two days after he was bumped at Hearne, after having spent only five days working at this location, or with other statements which the Claimant himself put in writing when corresponding either with his union representative or with the Carrier.[28] The Claimant did not rent an

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[25]All documentary information on this Claimant is found in Carrier's Exhibit O (all pages) & TCU Exhibit C through L.

[26]Reletting fee was $243.00 minus the $100.00 deposit or $143.00. See and compare information cited here on home in Beaumont, apartment in Hearne, and then the return to Beaumont: TCU Exhibit @ p.3 & Carrier's Exhibit O @ pp. 9-10 & 16-18 inter alia.

[27]Carrier's Exhibit F @ p.2.

[28]In the Claimant's October 19, 1998 letter to the Carrier and to the union he talks about the apartment lease in Bryan, Texas (Hearne) "...from July 17, 1998 which was to end October 31, 1998...". (TCU Exhibit F @ p.1). On that same date the Claimant also wrote to the Carrier (to a different officer) and

apartment at Hearne until October 31, 1998. In view of documentation furnished in the record such statement is false.

Upon the full record before him the arbitrator is not able to reasonably conclude that the Claimant established a permanent address at Hearne after he exercised seniority there in July of 1998. As such this Claimant is not eligible for Attachment "B" benefits for the brief time he spent in Hearne. The union argues that the Claimant had "...every intention of establishing a residence at or near Hearne, Texas...". Such intention is not questioned here by the arbitrator. But the facts of record show that the Claimant never did actually establish a residence there. Precedent established by Award 220 of the Special Board off the CN&W, Award 219 of PLB 1186, Award 6 of PLB 3096 and Award 18 of PLB 3399 applies here.

Ruling

Upon basis of the full record before him the arbitrator rules that the claim for lump sum moving benefits by Claimant Colbert under Attachment "B" of NYD-217, for a move from Beaumont to Hearne, Texas, should be denied and thus, the further application for moving benefits of $15,000 from Hearne, Texas to St. Louis, Missouri should also be denied. The payment of $25,000 to the Claimant for his move from Beaumont, Texas to St. Louis, Missouri, under Attachment "B" of NYD-217, is the applicable benefit accruing to the Claimant under NYD-217.

(b) **The Claim of Neil A. Norfleet**

Claimant Norfleet was displaced from his position in Strang, Texas on June 24,

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to the union wherein the lease cited became an apartment which "...I was renting in Bryan, Texas from July 17th until October 31, 1998...: (Carrier's Exhibit O @ p.28). In fact, the Claimant never rented this apartment until October 31, 1998. The lease at Bryan, Texas terminated on July 21, 1998 which was two days after the Claimant was bumped at Hearne. The Bryan apartment Vacate Report clearly states this. This Report was sent to the Claimant to his home address in Beaumont, Texas (Carrier's Exhibit O @ p. 16).

1998 and he exercised seniority to Hearne, Texas effective June 27, 1998. Employee Norfleet trained at Hearne on the following dates after exercising seniority to that point: June 27-July 1, 1998; July 5-8, 1998 and July 11-12, 1998 for a total of eleven working days. He elected for lump sum moving benefits as a home owner after exercising seniority to Hearne and was paid $25,000 by the Carrier. Thereafter Claimant Norfleet was displaced at Hearne and he became a dismissed employee.[29] After that the Claimant was paid his dismissal allowance under NYD until October 5, 1998 when he was recalled to St. Louis, Missouri. When Claimant Norfleet made his move to St. Louis in October of 1998 the Carrier advised him to use the payment of $25,000 for the move from Strang to St. Louis. An additional claim for $15,000 was filed by Claimant Norfleet for the move from Hearne, Texas to St. Louis, Missouri which was denied by the Carrier.

At issue is whether employee Norfleet ever established a residence in Hearne, Texas during the eleven days he worked at this location.

In correspondence to his union representative on October 20, 1998 Claimant Norfleet states that after he was "...bumped on July 13, 1998 (he) remained in Bryan

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[29]The record contains some inconsistency with respect to exactly when this Claimant was bumped at Hearne. He himself states that he was bumped on July 13, 1998 and TCU Submission to this case states that he was bumped on July 18, 1998. See and compare TCU Exhibit XX @ p.2 with TCU Submission @ p. 20. If the Claimant was bumped on the latter date there is no information on why he did not continue work on what would have been his regularly assigned work week after July 12, 1998 which is the last listed day he worked at Hearne, Texas. Further, his documented utility bills at his Hearne area apartment state that he paid utilities only until July 14, 1998. See TCU Exhibit XX @ pp. 7-8. In either case the record does state that the Claimant only worked a total of eleven days at Hearne and there appears to be no dispute over this.

(Texas) until (his) lease (there) ran out...".[30] He states that he then moved back to his home at Crosby, Texas. As will be shown below, there is no evidence that the Claimant remained in Bryan, Texas until July 31, 1998. He stopped paying utilities there almost immediately after he was bumped. How could he be living in the apartment and not be paying the utilities?

The record shows that the Claimant signed a lease agreement for an apartment at Villa West Apartments, 3406 Finfeather Road, Apartment 1405, Bryan, Texas (near Hearne) which was to commence on June 27, 1998 at an "...initial term..." which was to extend until July 31, 1998. At that point this Claimant also signed up for payment of utilities at that location. There is no information of record that employee Norfleet had a telephone installed in the apartment. He states that he had a pager and that the Carrier had access to him during his tenure at Hearne.[31] Utility bills actually paid by the Claimant while at the Villa West Apartments show that he paid them for the dates of June 26, 1998 through July 14, 1998 inclusive and that the bills were sent not to his Villa West

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[30]Full record of documents on this case are found in TCU Exhibits WW through EEE and Carrier's Exhibit S.

[31]By the time this Claimant gets to St. Louis, Missouri after being recalled there in October of 1998 he apparently no longer had a pager. In correspondence to the Carrier from St. Louis about his claim for alleged move from the Hearne area to St. Louis the Claimant states: "I hate to differ with you. I have been living in St. Louis for 8 months and I don't have a beeper or a car phone because there is no need for have one at this time". See TCU Exhibit DDD. But the Claimant does not deny in this correspondence that he does not have a home phone in St. Louis, which was the issue in Hearne. He states, in effect, that a beeper was good enough in Hearne but he no longer has one in St. Louis. There is considerable information of record in this case to the effect that the Claimant moved into the DeBaliviere Place Apartments in St. Louis, Missouri on October 3, 1998. His St. Louis move is not at issue in this case. The issue under scrutiny is whether the Claimant ever established residence in (the) Hearne, Texas (area) after he exercised seniority there, effective June 27, 1998.

Apartment address, but to his home address in Crosby, Texas. Reasonable conclusion here is that the Claimant returned to Crosby, Texas on either July 13 or 14, 1998 immediately after he was bumped at Hearne. The Claimant may have moved some furniture to the Villa West Apartments in Bryan, Texas and that is not in dispute here. The rental agreement for the Villa West Apartments states that the apartment rented was unfurnished. He explains in a letter to his union representative, which not in dispute here, that with the assistance of his brother he moved some furniture and household goods to the unfurnished apartment in Bryan with a cargo van he had and a Mercury villager.[32] Those type of vehicles would have permitted the Claimant to have moved necessities to his rental apartment in Bryan. Such is not at issue here. What is at issue is whether he stayed there long enough and took other measures which were sufficient to establish residence. The full record before the arbitrator in this case warrants conclusion, under the rule of reasonableness, that the Claimant to this case had not established residence at Bryan. He remained there only a little more than two weeks. He did not even take the basic measure of establishing phone service which, the record suggests, he did do later when he was recalled to St. Louis, Missouri. Nor is there any other receipt about any service which the Claimant signed up, or purchase he made, while at Bryan, Texas to substantiate his contention that he remained there until his "...lease was out...".[33] There is

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[32]See TCU Exhibit XX @ p. 2.

[33]See Blockbuster Video receipt, Office Depot receipt and Aerofit Center Health and Fitness Trial Membership receipt (TCU Exhibit XX & pp. 6 & 10) all of which are dated no later than July 9, 1998.

not a scintilla of evidence in the record before the arbitrator to warrant conclusion that the Claimant did as he said with respect to the lease. The fact is that the evidence shows that the Claimant stayed in Bryan, Texas approximately 19-20 calendar days, assuming he stayed there the whole time.

On basis of the evidence of record the arbitrator is not able to conclude that the Claimant established a residence during the eleven days he worked at Hearne, Texas in late June and early July of 1998. Precedent established by Award 220 of the Special Board off the CN&W, Award 219 of PLB 1186, Award 6 of PLB 3096 and Award 18 of PLB 3399 applies here.

Ruling

Upon basis of the full record before him the arbitrator rules that the claim for lump sum moving benefits by Claimant Norfleet under Attachment "B" of NYD-217, for a move from Strang, Texas to Hearne, Texas should be denied and thus, the further application for moving benefits of $15,000 from Hearne, Texas to St. Louis, Missouri should also be denied. The payment of $25,000 moving expenses to the Claimant for his move from Strange, Texas to St. Louis, under Attachment "B" of NYD-217, is the applicable benefit accruing to the Claimant under NYD-217.

(c) The Claim of A. W. Galentine

Claimant Galentine was displaced on August 30, 1998 from his position in Houston, Texas. He exercised seniority to Hearne, Texas on that same day. He elected lump sum relocation benefits of $15,000 under Attachment "B" of NYD-217. On September 12, 1998 he was bumped at Hearne and became a dismissed employee. He was paid a dismissal allowance under NYD until October 5, 1998 at which time he was

recalled to work at St. Louis, Missouri.

At issue here is whether this Claimant should have been paid lump sum moving benefits for claimed establishment of a residence at Hearne.

The Claimant worked at Hearne, after exercising seniority to that point, for six days and took one personal leave day. He was in training at Hearne on the following dates: August 31 and September 1, 5-6 and 8-9, 1998. He took a personal leave day on September 2, 1998.

There is a residential lease agreement in the record which was signed by the Claimant which began on August 31, 1998 for a property at 124 Debbie Lane, Iola, Texas. Iola which is located about 40 miles from Hearne. The owner of the property is listed as a certain Margarita Gonzales, 14537 Sellers, Houston, Texas. A search for this person by the Carrier during an audit failed to turn up a Margarita Gonzales at this address but it did discover a certain Robert Perez who lived at that address.[34] Information provided to the Carrier does state that a certain Margaret Perez leased the home at 124 Debbie Lane, Iola, Texas on behalf of her elderly mother, Margarita Gonzales, to the Claimant to help pay her mother's expenses. This information provided by Mrs. Perez states that she handles all of her mother's affairs. This person states that the utility bills were paid for the Claimant with the rent. This is contrary to the information contained on the lease agreement which states that the utilities would not be paid by the landlord.

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[34]Full record on this case is found in TCU Exhibits M through Y and Carrier's Exhibit P.

Research by the Carrier with Entengy at Iola, Texas which is the energy company there fails to show any utilities listed in the Claimant's name or that there were any utility deposits/payments for the 124 Debbie Lane property for the time the Claimant states he was there. The Claimant had no telephone installed at 124 Debbie Lane although there is GTE cell phone bill dated September 16, 1998 which is part of the record in this case. This phone bills is listed in the names of the Claimant and Patricia Galentine. That bill is addressed to 6526 Hanley Lane, Houston, Texas. No moving receipts for the move of an furniture to the Iola, Texas address are to be found in the record. The Claimant states that he moved his effects himself.

After a review of the full record in this case the arbitrator concludes that the Claimant had not established residence at Iola, Texas (Hearne) after he exercised seniority to that point on August 30, 1998. He was required to stay at Hearne a sum total of 14-5 calendar days and actually trained at Hearne for only six days. The arbitrator cannot conclude, on basis of evidence, that the Claimant established a residence at or near Hearne during this brief period. No home phone service was established, and the information on utilities suggest that no utility bills were paid. The phone bill for the Claimant's cell phone use for late August and early September was sent to his home address in Houston, Texas. Precedent established by Award 220 of the Special Board off the CN&W, Award 219 of PLB 1186, Award 6 of PLB 3096 and Award 18 of PLB 3399 applies here.

Ruling

Upon the basis of the full record before him the arbitrator rules that the claim for lump sum moving benefits and transfer allowance by Claimant Galentine under Attachment "B" of NYD-217 for his claimed establishment of a residence at Hearne, Texas in the months of August and September of 1998 should be denied.

(d) The Claim of Richard Lee Jr.

When Claimant Lee's position at Houston, Texas was abolished he exercised seniority to Hearne, Texas effective September 16, 1998. On September 27, 1998 Mr. Lee was displaced at Hearne and he went on dismissed status. He collected a dismissal allowance until he was recalled to work at St. Louis, Missouri on October 5, 1998. His protected status in St. Louis remains in dispute[35] but this has no bearing on the narrow issue before the arbitrator in the instant case which addresses whether Claimant Lee had a lump sum benefit and transfer allowance coming under Attachment "B" of NYD-217 for claimed establishment of a residence at Hearne, Texas in the month of September, 1998.

According to the record before the arbitrator in this case Claimant Lee trained on a position at Hearne, Texas on September 16, 21-23 and 26, 1998 and he claimed sick time for the two days of September 20 and 27, 1998. In all Claimant Lee's brief tenure in Hearne ran from September 16, 1998 through September 26, 1998, or ten calendar days.

Claimant Lee signed an apartment lease on September 16, 1998 for an apartment at Villa West Apartments, 3407 Leon Street, Bryan, Texas. The lease states that no other

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[35]Case No. 3 before this Special Board of Arbitration will address the issue of Mr. Lee's status because of his recall to St. Louis, Missouri as of October 5, 1998.

person besides the Claimant was to live in the apartment. There is a notarized statement in the record to the effect that a certain Roberic Fobbs used his truck to assist the Claimant to move some furniture from Houston to the Villa West Apartments in Bryan, Texas on September 18, 1998.[36] No phone was ever hooked up in the apartment and the utilities were paid as part of the rent. A Vacate Report on the Villa West Apartments shows that the Claimant was liable for rent for the month of September (prorated), October and November, 1998 which is supported by a subsequent invoice[37] but there is no indication that the Claimant actually stayed at the Villa West Apartments beyond the time he was bumped at Hearne. The latter invoice is sent to his original Houston, Texas address which the Claimant had listed as his Houston address, when making first request for renter's allowance on September 16, 1998. This address is 6315 Gladwell Drive, Houston, Texas. There can be no doubt that this Claimant was back at the Houston address living there as soon as September 29, 1998. On that date, which was a Tuesday, a Carrier officer called the Claimant in the afternoon to advise him of his impending recall to St. Louis. At that time the Claimant advised the person talking on the phone to the Carrier officer that he was "...too busy to talk..."and the person at Mr. Lee's residence advised the Carrier officer accordingly.[38] The Claimant never relinquished his Houston apartment. The Claimant never established phone service at his Villa West apartment in

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[36]Record on this case is found in TCU Exhibits MM through VV and in Carrier's Exhibit R.

[37]Carrier's Exhibit R @ pp. 21-22.

[38]Carrier's Exhibit R @ p. 12.

relied on a pager to receive messages.

A review of the full record shows insufficient evidence to warrant conclusion that the Claimant established a residence in Bryan, Texas in the month of September of 1998 while serving a very brief tenure at Hearne. He rented an apartment near Hearne, stayed there a short period of time while employed at Hearne for ten calendar days, without establishing phone service, and then returned to his apartment at 6315 Gladewell in Houston, Texas which was his address prior to ever exercising seniority to Hearne. Precedent established in Award 220 of the Special Board off the CN&W, Award 219 of PLB 1186, Award 6 of PLB 3096 and Award 18 of PLB 3399 applies here.

Ruling

Upon basis of the full record before him the arbitrator rules that the claim for lump sum moving benefits and transfer allowance by Claimant Lee under Attachment "B" of NYD-217 for his claimed establishment of a residence near Hearne, Texas in September of 1998 and thereafter should be denied.

Findings

Argument by the Organization is that in all seven cases the Claimants did everything to try and establish a permanent residence in Hearne, Texas after they exercised seniority to that point. While the facts of each case laid out in the foregoing is the test of whether the Claimants behaved this way or not, those same facts also indisputably point to the conclusion that in no case did any of the Claimants ever, in fact, establish a residence with all that this implies, in Hearne. In no instance did any of the Claimants relinquish the residence they had, whether a rental unit or a home, prior to

exercising seniority to Hearne, and in all instances the Claimants immediately returned to that former residence after being bumped. Attachment "B" of NYD-217 states plainly that in order to collect the benefits outlined in the Options of that Attachment an employee must "...change place of residence...". In no case, did any of the Claimants to this case do that. What they did was exercise seniority to the place where they had to work, stay there a brief period prior to being bumped, and then they returned to their original residences. Such behavior cannot be construed as a reasonable interpretation of the intent of Attachment "B" when it speaks of changing place of residence.

The Organization disputes the Carrier's interpretation of the language of Attachment "B" when the Carrier states that a change of residence means of permanent change of residence. The rule of reasonableness tells us that this interpretation by the Carrier is the proper one. A permanent change of residence usually is, but does not even necessarily have to be associated with time. If any of the Claimants would have moved to a new apartment in Hearne, and let their former go, reasonable minds could conclude that such would have qualified as a change of residence. None of the seven Claimants to this case did that. Nor did any of them put their former homes up for sale nor take any preliminary steps of looking for a new one. Such could possibly have qualified as a change of residence. But none of the Claimants did this either. But, it could be argued that none of the Claimants had the time to vacate their old apartments nor sell their homes. This is true. And in the view of the arbitrator this is precisely the point in this case. None had time to do other than go to the point where they exercised seniority, stay

there a brief time, and then return to their former homes. Reasonable minds cannot conclude that this kind of behavior qualifies as changing one's place of residence. The Organization argues that the Claimants had no control over the duration of their stay at Hearne. No one disputes that. The brevity of the duration simply did not allow any of them to change place of residence.

Article III, Section 5 states that Attachment "B" benefits will be given to employees required to change their place of residence. Had these seven employees been permitted to have done so, absent the time constraints, they no doubt would have changed their places of residence. But the evidence of record indisputably shows that none of them actually did change their residence. After their short tenures at Hearne, all went back to live where they lived prior to exercising seniority to Hearne.

The Organization argues that there is an equity issue at stake in this case since some employees were given Attachment "B" benefits when they exercised seniority to Hearne, Texas from other points but only when they took separation pay as their second option. In response to this the arbitrator notes, first of all, that the record contains no specific information on these other employees. Secondly, Claimant Hemphill, one of the Claimants to this case, took separation pay and she was not accorded Attachment "B" benefits. Obviously, in view of the situation of Claimant Hemphill the equity argument starts to break down.

Lastly, as stated in each of the Rulings, conclusions arrived at in this case are consistent with arbitral precedent dealing with the change of address issue. Although all

of the precedent cited in each of the Rulings has some bearing on our own conclusions, some more and some less, particularly persuasive in this respect are the conclusions of Award 17 of PLB 4561. Therein it was concluded that several rental checks are insufficient proof of a change of residence. Likewise Award 219 of PLB 1186 and Award 6 of PLB 3096 speak of temporary commuting arrangements which do not qualify as changes of residence. In all seven cases, the arrangements set up by the Claimants qualified as commuter arrangements precisely because in no instance did any of the Claimants abandon their places of residence. In all instances all of the Claimants returned to their places of residence, which they had but temporarily left, prior to exercising seniority to Hearne.

Award

The Award for the claims filed by Claimants Colbert, Galentine, Hemphill, Krolczyk, Lee, Norfleet and Perrine is in accordance with Rulings stated in the foregoing.

Edward L. Suntrup, Arbitrator

Dated: February 24, 2000