AWARD NO. 2
Case No. 2

BEFORE THE ARBITRATION COMMITTEE
PURSUANT TO SECTION 9 OF THE
GREAT NORTHERN PACIFIC AND BURLINGTON LINES
MERGER PROTECTION AGREEMENT

In the Matter of the Arbitration Between BURLINGTON NORTHERN, INC. -and- BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	OPINION AND AWARD

QUESTIONS AT ISSUE:

1. Is the claim submitted on behalf of Maintenance of Way Department employees R. Kelchner, H. Coughlin, K. Kite, W. Kraskey, M. Lamping, Jr., A. Watts and J. Jasso -- for a monetary allowance equal to the value of the housing and domestic water supplied to them without charge as of March 3, 1970, the date of the Burlington Northern merger -- barred by the time limit provisions of Rule 42 of the Agreement between Burlington Northern, Inc. and the Brotherhood of Maintenance of Way Employees, effective May 1, 1971?

2. If this claim is not so barred, have the claimants been placed in a worse position, within the contemplation of Section 1(b)(1) of the parties' Merger Protection Agreement, effective January 2, 1966, with respect to compensation, rules governing working conditions, fringe benefits or rights and privileges pertaining thereto?

This case involves employees who on January 2, 1966, occupied Carrier-provided houses in remote localities, where housing otherwise was not easily obtained. Historically, employees assigned to such areas were supplied housing, partly as an inducement to accept the positions. But employees working in locations where housing was generally available were not offered living quarters by Carrier.

Section 1(b)(1) of the Merger Protection Agreement provides:

> The New Company will take into its employment all employees of said carriers as of the effective date of this Agreement or subsequent thereto up to and including the date of consummation of the merger who are willing to accept such employment, and none of the "present employees" of any of the said carriers shall be deprived of employment nor placed in a worse position with respect to compensation, rules governing working conditions, fringe benefits or rights and privileges pertaining thereto at any time during such employment by the New Company except as hereinafter provided.

A house provided under such circumstances as these is not compensation and cannot be translated into the hourly rate. There is no indication that it ever was considered a "fringe benefit," for purposes of Section 1(b)(1). If it can be described at all as a working condition or a privilege,

it was a limited one. The condition was not and never had been that a particular foreman would be supplied with housing. Rather its extent was that housing would be available to those foremen who worked in certain locations, if and when they worked there, and not otherwise.

Such housing is no more a working condition or a privilege, which attaches to the individual thereafter, than would be transportation to a particular workplace, where that is provided solely due to the nature of the job or its location. Carrier would not be obliged to continue to offer transportation (or its monetary equivalent) in an employee's new assignment, even though it had been provided to him on January 2, 1966, solely because of the particular assignment he held.

A condition like that at issue is a special concomitant of the location. It was not designed as a regular, unremovable benefit to the individual. Thus an employee now headquartered in a built-up area has no claim to continuation of a camp car provided him on January 2, 1966, because he then worked in a remote, sparsely settled location.

Just as the normal rate of compensation does not comprehend special monetary allowances, like casual overtime pay,

even if earned for sustained periods, "conditions" and "privileges" granted under special and abnormal circumstances were not guaranteed by Section 1(b)(1). If Carrier were obliged to grant their monetary equivalent (or the "privilege" itself), a special allowance would be treated as if it were part of the individual's normal rate, and it is not.

If Claimants were to return to positions in the same kind of localities where they worked on January 2, 1966, they might have a claim for the housing which had been furnished them. But they cannot carry the house with them to a spot where no such condition had existed.

AWARD

(1) The Answer to Question No. 1 is No.

(2) The Answer to Question No. 2 is No.

Milton Friedman, Neutral Arbitrator

C. L. Melberg, Carrier Member

O. M. Berge, Organization Member

Dated: New York, N.Y.
January , 1975

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AWARD

(1) The Answer to Question No. 1 is No.

(2) The Answer to Question No. 2 is No.

Milton Friedman, Neutral Arbitrator

C. L. Melberg, Carrier Member (Dissenting to answer to Question 1, Concurring in answer to Question 2)

O. M. Berge, Organization Member

Dated: New York, N.Y.
February 26, 1975