ARBITRATION COMMITTEE

In the Matter of the Arbitration Between:	) Pursuant to Article I, Section 11 of the) Oregon Short Line Protective Conditions
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES,	)
Organization,	) STB Finance Docket No. 32760
and	)
UNION PACIFIC RAILROAD COMPANY,	) **OPINION AND AWARD**
Carrier.	)

Hearing Date: April 5, 2001
Hearing Location: Sacramento, California
Date of Award: May 24, 2001

MEMBERS OF THE COMMITTEE

Sole and Neutral Member: John B. LaRocco

QUESTIONS AT ISSUE

Does the Carrier have the right to demand that employees, who are subject to the implementing agreement applicable to the abandonment of the Tennessee Pass Line and who accepted lump sum allowances in lieu of making claims for relocation benefits under Article I, Sections 9 and 12 of the Oregon Short Line employee protective conditions, actually change their residences?

If the answer to the first question is in the affirmative, and the employee did not relocate, does the Carrier have the right to recoup the lump sum allowance previously paid to the employee?

[27:BLE-UP.OSL]

OPINION OF THE COMMITTEE

I. INTRODUCTION

Ancillary to the merger of the Union Pacific Railroad and the former Southern Pacific Transportation Company, the merged Carrier sought and received the Surface Transportation Board's (STB) approval to discontinue service on a stretch of track comprising a large portion of the Tennessee Pass Line. To protect employees affected by this discontinuance of service, the STB imposed the employee merger protection conditions set forth in *Oregon Short Line Railroad and the Union Pacific Railroad Company-Abandonment Portion Goshen Branch between Firth and Ammon, in Bingham and Bonneville Counties, Idaho,* 360I.C.C., 91,98-103 (1979) ["The Oregon Short Line Conditions"] on the merged Carrier.

While the record is not entirely clear, the Carrier apparently discontinued service in accord with the STB's approval some time in late 1997 or early 1998.[1]

At the April 5,2001 hearing, the Organization and the Carrier waived the tripartite arbitration committee provided by Article I, § 11 of the Oregon Short Line Conditions. Instead, the parties designated the undersigned to act as the sole and neutral member of the Arbitration Committee. In addition, the parties also waived the 45-day time limit, set forth in Article I, § 11(c) of the Oregon Short Line Conditions, for issuing this Opinion.

[1] The transaction was a discontinuance of service not an abandonment. The STB deferred a final ruling on the Carrier's abandonment application. The STB apparently wanted empirical evidence insuring that Tennessee Pass Line tral~fic rerouted through the Moffat tunnel would not cause substantial congestion. *Union Pacific Corporation - Control and MergerSouthern Pacific Rail Corporation, STB Finance Docket No. 32760 slip opinion at p. 156 (1996).*

II. BACKGROUND AND SUMMARY OF THE FACTS

Pursuant to STB approval, the Carrier discontinued service on that portion of the Tennessee Pass Line running from Canon City, Colorado through Salida, Colorado and Malta, Colorado and then to Leadville, Colorado and finally, to Dotsero, Colorado. The Carrier abolished many maintenance of way positions along the route resulting in employees obtaining new assignments elsewhere in Colorado.

Pursuant to Article I, Section 4(a) of the Oregon Short Line Conditions, the Organization and the Carrier entered into an implementing agreement establishing procedures pertaining to the rearrangement of employees stemming from the discontinuance of service and employee protective benefits. In Section 3(A) of the implementing agreement, which is dated October 1, 1997, the parties iterated that the Oregon Short Line Conditions would apply to the transaction. Simultaneously, the parties entered into a September 30, 1997 Side Letter which addressed employee benefits surrounding the relocation of their jobs. Paragraph two of the Side Letter provides:

> An employee whose position is abolished as a result of the discontinuance of service on these lines, who is required to change his place of residence, and who, on the date of September 24, 1996, owned a home or was under contract to purchase a home and provides evidence of such ownership, will be afforded one of the following options which must be exercised within thirty (30) days from the date assigned to a position at a new work location:
>
> Option 1: Accept the moving expense and loss in sale of home benefits provided by the terms of the Oregon Short Line Conditions and paragraph (b) of this Letter of Understanding.
>
> Option 2: As a homeowner, accept a lump-sum transfer allowance in the amount of Eighteen Thousand Dollars ($18,000) in lieu of any and all other moving expense and loss in sale of home benefits and allowances provided under the terms of the Oregon Short Line Conditions.
>
> <u>NOTE</u>: A homeowner is defined as one who owns or is under contract to purchase

> their own home which is presently occupied as a principle [sic] place of residence. A copy of deed, with an original notary public signature must be submitted with election of Option 1 or 2. A contract, deed or lease for a given residence may be submitted/used only one time as proof of home ownership for entitlement to this homeowner relocation benefit.

Paragraph (a) of the Side Letter states:

> a) 11 an employee elects Option 2 of any of the above and does not report to his new assigned work point within thirty (30) days from date released from old work location, the employee will be considered as having resigned from service unless there are extenuating circumstances warranting an extension which must be promptly reported to the manager at the new location where assigned prior to expiration of thirty (30) days as indicated herein.

The Side Letter provided for options like those specified in the second paragraph for employees who owned a mobile home and for employees who did not own a home. The lump sum relocation allowances for these two categories of employees was $10,500 and $7,500, respectively.

Both Options 1 and 2 allude to the Oregon Short Line Conditions. Article I, Section 9 of the Oregon Short Line Conditions, which provides an employee's entitlement to moving expenses, reads:

> 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 of the traveling expenses of himself and members of his family, including living expenses for himself and 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 with 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 of this section unless such claim is presented to railroad within 90 days after the date on which the expenses were incurred.[2] [Emphasis in text.]

Twenty-four employees, whose jobs were abolished due to the discontinuance of service over the Tennessee Pass Line, applied for Option 2, that is, they sought the particular lump sum allowance for a home owner, mobile home owner or renter. The Carrier approved 14 applications. It rejected 10 applications.[3]

The application process consisted of the employee furnishing what the application form called *Verification of Relocation*. For home owners, the application form instructed employees to submit evidence ". . . of home ownership in the form of a certified copy of your deed or a title binder issued by a title company and evidence of relocation to the new work location by providing either a notarized copy of a contract to purchase with the seller's acceptance or a copy of a fully executed lease at the new work location."

In addition, the second paragraph on the application form stated:

> I acknowledge and understand the terms and conditions associated with this relocation offering and that the amount of may [sic] relocation allowance will be subject to all applicable tax withholdings. I further acknowledge and understand that this allowance is without prejudice to Union Pacific's position that I am

---

[2] An employee's entitlement if he incurs a loss on the sale of his home is set forth in Article I, Section 12 of the Oregon Short Line Conditions.

[3] The Carrier claims that it rejected four applications because the applicants did not change their residences. The Carrier disapproved six applications because the applicants purportedly failed to supply sufficient information.

> not entitled to benefits under either the New York Dock employee protection conditions or any other protective agreement. If it is later held that I am entitled to such benefits, any payments received under this policy will be applied against any benefits due under the New York Dock Conditions or any other protective agreement.[4]

The seven Claimants herein were among the 14 employees who submitted applications for the lump sum allowance, received Carrier approval of their applications and were paid the applicable allowance. At the time of their applications, Claimants fulfilled the verification of relocation criteria. Each Claimant provided the Carrier with an executed lease at or near his new work location which was a great distance from his old work location.[5] These leases were signed in April, May and July, 1998. Most of the leases covered a term, which was usually month to month or six months, beginning on the day of execution. The Carrier paid the seven Claimants lump sum allowances between May 1998 and November 1998.

The seven Claimants apparently neither sold their homes at their old work locations nor moved their families to their new work locations. Claimants evidently used their rental properties during the work week and returned to their existing homes at their old work locations during weekends. Claimants also maintained the addresses of their homes at their former work locations as their addresses of record with the Carrier.

The Carrier asserted that it later (the exact time is unspecified) conducted an internal audit that revealed that the seven Claimants did not permanently change their residences. As a

---

[4] The parties acknowledge that when the application refers to New York Dock that the correct reference is the Oregon Short Line Conditions.

[5] All Claimants, except one, resided in either Canon City or Salida at the time of the discontinuance of service. Claimants executed leases to rent premises in Grand Junction, Boulder, Inglewood, Aurora, Edgewater and Pueblo, Colorado. Claimants' new work locations were anywhere from 43 to 125 miles from their prior work locations.

consequence, on February 11, 2000, the Carrier, demanded that Claimants provide proof that they changed their residences and, absent such proof, the Carrier would put into motion a plan to incrementally recover the lump sum allowances.

The Carrier's February 11, 2000 correspondence to Claimants triggered the instant dispute. The Carrier agreed to hold any recoupment of monies in abeyance pending the outcome of this arbitration.

III. THE POSITIONS OF THE PARTIES

A. The Organization's Position

Claimants complied with all the contractual requirements for receipt of the lump sum allowances under Option 2 of the September 30, 1997 Side Letter. In essence, the Carrier and the Organization created Option 2 to streamline the process of granting employees moving and relocation benefits. Option 2 was an alternative to the traditional Oregon Short Line moving expense reimbursements and loss on home sale benefits that eliminated the administrative burden associated with those benefits. Certainly, an employee had the capacity to chose traditional Oregon Short Line benefits by selecting Option 1. But, if the employee chose Option 2, the employee did not have to permanently relocate his residence off the Tennessee Pass Line because both parties received a benefit not found in Option 1. Claimants received cash allowances which they could spend toward moving expenses or any other outlay. The Carrier was relieved of the record keeping burden of verifying moving expenses; did not have to worry about potentially becoming involved in the purchase, ownership and sale of residential real estate; and, avoided the cost of defending any claims over, for example, the value of a home. To be eligible for the lump sum allowance, the employee needed only to show that his job was abolished as a result of the discontinuance of service and that he complied with the verification of relocation criteria.

The Carrier does not dispute that each Claimant submitted evidence fulfilling the two-pronged requirements stated in the verification of relocation. Claimants showed that they owned or rented a home at their old work locations and they submitted executed leases covering real property located at or near their new work locations. Since the verification of relocation process was different than an employee's obligation to receive traditional Oregon Short Line moving and home sale benefits, the lump sum allowance option was separate and apart from the Oregon Short Line Conditions. As such, Claimants needed only to fulfill the verification of location criteria rather than to permanently change their residences. Each Claimant did so. The Carrier now wrongfully wants to require Claimants to change their residences as if they had opted for traditional benefits under the Oregon Short Line Conditions.

The Carrier cannot make eligibility for the lump sum allowance as stringent as eligibility for traditional Oregon Short Line moving and home sale benefits. Stated differently, the purpose of the lump sum allowances was to eliminate the confrontational and costly claims process. The Carrier wants to retain the advantages it received from the lump sum allowances while still forcing Claimants to strictly comply with the Oregon Short Line Conditions.

The language that the Carrier wrote in the lump sum allowance application definitively demonstrates that, employees are eligible for the benefit even if they do not comply with the rigid obligations of the Oregon Short Line Conditions. In paragraph two of the application, the Carrier carefully crafted a disclaimer saying that eligibility for the lump sum allowance could never be construed to mean that an employee was eligible for Oregon Short Line protective benefits. Thus, the Carrier knew that an employee could receive a lump sum allowance without complying with the traditional change of residence requirements in the Oregon Short Line Conditions.

To reiterate, since the lump sum allowance option relieved both the employee and the Carrier from going through the grievance process, the eligibility criteria for the lump sum allowances were different from the eligibility requirements for Oregon Short Line moving expense reimbursements and benefits for losses on home sales.

Even if the Carrier's argument is persuasive, Claimants changed their places of residence. The Claimants moved to leased property at or near their new assignments. They could not reside at their houses at their former locations and commute to work on each work day. At most, they could only return to their homes at the old work locations on weekends.

Assuming *arguendo,* that Claimants were obligated to permanently change their residences, the equitable doctrine of laches bars the CalTier from collecting the lump sum allowances that it previously paid Claimants. The Carrier waited an unreasonable length of time to commence recoupment of the monies and the delay prejudiced Claimants. The Carrier did not seek to recover the previously paid lump sum allowances from Claimants until February 2000. The last Claimant received his lump sum on or about November 1, 1998 and most Claimants received their allowances much earlier in 1998. Thus, the Carrier delayed approximately two years before seeking to recoup the monies. Recovering the monies would wreak great hardship on Claimants because they have already expended the funds on, among other things, rent at their new work locations. Also, this is not a situation where the Carrier mistakenly paid the allowances. Before paying the allowances, the Carrier carefully verified that each Claimant was eligible for the lump sum allowance.

Besides laches, the Carrier is equitably estopped from recovering the lump sum allowances from Claimants. Claimants never misrepresented the locations of their residences. Claimants kept their old addresses on file with the Carrier as their addresses of record. The Carrier could have easily ascertained, long before mid-February 2000, that Claimants retained homes at their old work locations.

To reiterate, regardless of the terms of the Side Letter, laches and estoppel now prohibit the Carrier from recovering any of the previously paid lump sums from Claimants.

B. <u>The Carrier's Position</u>

The parties never intended to eradicate an employee's basic obligation to permanently change his residence as a condition of receiving relocation benefits pursuant to the Oregon Short Line Conditions. Claimants were obligated to permanently change their residences regardless of whether they chose Option 1 or Option 2.

Article I, Section 9 of the Oregon Short Line Conditions expressly provides that an employee must "move his place of residence" to obtain reimbursement for moving expenses. The second paragraph of the September 30, 1997 Side Letter, which contains the two options, plainly states that the employee ". . . is required to change his place of residence . . ." While Option 2 was a special arrangement designed to avoid administrative costs associated with an employee's relocation, the Carrier never waived the fundamental requirement that the employee must change his place of residence as a condition to receiving benefits under either Option 1 or Option 2. Nothing in the language of the Side Letter waives the change of residence requirement. Indeed, a relocation means changing one's residence.

The Carrier paid Claimants the lump sum allowances in good faith. Claimants provided documents showing that they were in the process of relocating or that they had actually relocated. Claimants did not disclose to the Carrier that either they had not moved their residences or they had no intention of moving their residences. Claimants kept their old addresses as their addresses of record with the Carrier. Since Claimants did not relinquish the residences that they had at their former work locations, they could not establish residences at their new work locations. As such, Claimants did not change their residences as required under the Side Letter and the Oregon Short Line Conditions. Thus, they were ineligible for any type of relocation benefit including the Option 2 lump sum allowances.

The disclaimer on the application form does not cut to the issue of whether an employee was required to change his residence. The disclaimer cannot be broadly read to relieve employees of their fundamental obligations under the Oregon Short Line Conditions. Rather, the disclaimer was a simple reference to benefits beyond relocation benefits.

Laches does not bar the Carrier from recouping the lump sum allowances which it paid to employees who were not eligible for Option 2. To reiterate, the Carrier only paid the allowances based on the employees' representation that they were moving their residences. Therefore, even if laches were applicable, Claimants come before this Committee with unclean hands.

Furthermore, the Carrier's audit was conducted in a timely fashion. The Carrier did not fully complete the handling of the claims arising from the discontinuance of service over the Tennessee Pass Line until early 2000. It was reasonable to make an accounting at the conclusion of the claims process. When the audit disclosed that the Claimants did not change their places of residence, the Carrier immediately sought to recoup the lump sums. Therefore, there has not been any delay, much less, an unreasonable delay.

Finally, Claimants have not shown that they suffered any substantial prejudice. Merely asserting that they spent the allowances does not create prejudice. The Carrier may recover the lump sums as it can any other mistaken payment.

IV. DISCUSSION

Article I, Section 9 of the Oregon Short Line Conditions states that an employee shall be reimbursed for moving expenses if the employee is required to "change the point of his employment" and "move his place of residence" as the result of a transaction. Arbitration Committees interpreting Article I, Section 9, and identical language appearing in other protective conditions, have ruled that a change in residence means that the employee must permanently establish a primary residence at the employee's new work location and surrender his residency at the old work location.

Purchasing a residence at the new work location is usually satisfactory proof demonstrating a permanent change in residence. *Public Law Board No. 4561, Award No. 16* (Seidenberg). Contrarily, leasing property at the new work location is usually insufficient to prove a change of residence. *Allied Services - TCU and Union Pacific Railroad* NYD § 11 Arb. (Suntrup 2000). If an employee rents premises while his family continues to live in the original home at the employee's old work location, the employee, in all probability, has not changed his residence. *Public Law Board No. 3096, A ward No. 7* (Seidenberg). In other words, temporaiy shelter for the employee at the new work location while the employee still commutes, albeit not every day, to his former home, does not constitute a change in residence. *Public Law Board No. 3399, Award No. 18* (Eischen). Rather, the employee must have the intent to indefinitely establish his primary residence at the new work location. *Public Law Board No. 4792, Award No. 1* (LaRocco).

Based on the above recited line of authority, Claimants herein did not meet the Oregon Short Line definition of a change in residence. While they established a leasehold at or near their new work locations, none of the Claimants abandoned their homes at their old work locations. Indeed, Claimants regularly commuted back to their residences for weekends. The temporary shelters, the weekly commutes and the fact that Claimants kept their homes at their old work locations as their permanent address (i.e. residence) with the Carrier definitively demonstrate that the employees did not develop an intent to indefinitely reside at their new work locations.

Therefore, the threshold issue before this Committee is whether the parties, by writing Option 2 into the September 30, 1997 Side Letter, superseded the definition of a change in residence within the meaning of the Oregon Short Line Conditions.

The starting point for construing contract language is to give the ordinary meaning to the words adopted by the negotiators. The express language in the Side Letter supports the Carrier's position that the parties did not contemplate relieving employees of the change in residence requirement regardless of whether they opted for traditional Oregon Short Line benefits (Option 1) or for the lump sum allowance (Option 2).

The introductory paragraph to the options states that an employee is ". . . required to change his place of residence" to be"... afforded <u>one of the following options</u> . . ." [Emphasis added.]
If the parties had wanted to set Option 2 apart from traditional Oregon Short Line protective benefits, they would have stated that the change in place of residence was necessary only if the employee selected Option 1. Instead, a change in residence was a condition attached to both options.

The subparagraph labeled "NOTE" after Option 2 expressly confirms this construction of

Paragraph 2. The NOTE lists the items a home owner-employee must furnish the Carrier just like the Carrier's lump sum allowance application. However, the NOTE states that this proof is necessary for an employee electing either Option 1 or Option 2. Therefore, the change in residence requirement pertained to both options.

The parties could have deleted the words "... required to change his place of residence..." from the second paragraph of the Side Letter. The appearance of this phrase evinces the parties' overriding intent that, to be eligible for any type of relocation benefit, the employee must change his residence within the meaning of the Oregon Short Line Conditions.

While selecting the Option 2 lump sum allowance did not relieve the employees from changing their places of residence, the lump sum allowance option amended other portions of Article I, Sections 9 and 12 of the Oregon Short Line Conditions. The lump sum allowance gave the employees the benefit of a fixed cash amount regardless of what they actually spent on relocation, including whether or not they absorbed a loss on the sale of their house. In exchange, the Carrier, by simply paying the fixed sum, did not have to keep track of moving expenses; did not have to become immersed in the sale, ownership or purchase of a home; and, did not have to defend what could have been many claims over the reasonableness of moving expenses or home appraisals. In other words, the lump sum allowance was easier for both the employee and the Carrier to administer.

However, the amendment to streamline implementation of the benefits did not touch on the conditions to receiving the benefit. Therefore, even though the relocation allowance was a different way of distributing benefits to the employees, Claimants still had to meet the traditional eligibility criteria for receiving the allowance. As this Committee stated above, the employees were still obligated to change their places of residence within the meaning of the Oregon Short Line Conditions.

While it may be relevant to the issue of laches, the language on the Carrier's lump sum application form did not obviate the Claimants' requirement that they change their places of residence. Of course, the application, which was drafted by the Carrier, cannot change the terms of the parties' negotiated implementing agreement and the attendant Side Letter.[6] Perhaps, the application form was flawed. Nevertheless, the Side Letter is controlling. The Side Letter clearly and unambiguously mandates that employees change their places of residences.

Last, the application form's disclaimer is irrelevant. This Committee construes the disclaimer as the Carrier's attempt to insulate itself from possible liability for other types of protective benefits such as dismissal and displacement allowances. It does not affect the explicit relocation benefits established by the Side Letter. Therefore, the disclaimer can hardly operate to excuse employees from not changing their places of residence.

To reiterate, Claimants did not change their residences, as that phrase has been interpreted, and, by choosing Option 2 in the Side Letter, Claimants were not relieved of satisfying the change in residence requirement.

The Carrier may always recover payments it made to an employee where the expenditure was erroneous or based on a misrepresentation by the employee. *NRAB Third Division Award No. 9117* (Begley); *NRAB Third Division Award No. 9581* (Johnson). However, this Committee has serious

---

[6] The Organization would vigorously object if the Carrier's application had required the employees to marshal evidence to satisfy requirements greater than those enunciated in the Side Letter. Correspondingly, the Organization cannot say that merely because the Carrier might not have compelled Claimants to strictly comply with all the requirements of Oregon Short Line Conditions that the application form amended the Side Letter.

reservations regarding whether the Carrier made a mistake in the payment, or a mistake in its evaluation of Claimants' applications or an error on the application form, itself. Also, the Carrier could have, but for some inexplicable reason did not, confirm that Claimants had not changed their residences around the time they applied for the lump sum allowances because Claimants did not engage in any subterfuge to conceal the fact that they maintained their residences at their old work locations. Claimants kept, as their addresses of record with the Carrier, the addresses of their residences at their old work locations. Therefore, no Claimant misrepresented the status of his residency to the Carrier.

Laches is a flexible, equitable principle which operates to bar a party from asserting a right because the party has sat on the right for an unreasonable period of time and the belated assertion of the right would now prejudice the other party. *Transportation Communications International Union and Union Pac~fic Railroad,* NYD § 11 Arb. (Rehmus 1992). Under one particular set of circumstances, a short delay can wreak substantial prejudice. Under another set of circumstances, a long delay may not result in any prejudice to the opposing party. In this case, the Carrier delayed almost two years from the time that it paid the lump sum allowances to most of the Claimants.[7] On its face, two years may or may not be an unreasonable length of time. Compare *Public Law Board No. 1082, Award No. 1* (Hanlon) with *Third Division Award No. 15067* (Zack). Thus, this Committee must consider whether the 21-month delay before the Carrier sought to recoup payments prejudiced Claimants to determine if the delay, itself, was patently unreasonable.

Regardless of whether the Carrier made an error, it had the ability to quickly rectify any error

[7] The Carrier contends that the delay should he calculated from the time the entire claims process was completed but the more reasonable measurement of the passage of time is from the date of actual payment to Claimants until the date of the recoupment letter. In this case, that time period is from 16 to 21 months.

by simply consulting its internal records on each Claimant. If the Carrier had reviewed its records in Fall 1998, it would have discovered that Claimants still maintained, as their addresses of record, their residences at their old work locations even though the leases went into effect three or four months earlier.[8] Claimants executed leases which took effect in May, June and July, 1998. The Carrier could have, within a short time after these lease terms commenced, checked its records to determine if Claimants had changed their official residential addresses. If its check disclosed that Claimants did not change their addresses, then the Carrier could have asked for proof of a change in residence and, if not forthcoming, recouped the lump sum allowances. By waiting until mid-February 2000, the Carrier's action prejudiced the Claimants. Claimants were lulled into a false sense of security that they could utilize temporary shelters at their new work locations, commute on weekends back to their primary residences and maintain their primary residences as their addresses of record with the Carrier.

Since the Carrier had the ability to correct any error that it might have committed earlier in the process, its delay in seeking to recoup the lump sum allowances from Claimants was unreasonable. *NRAB Third Division Award No. 28178* (Benn). The delay prejudiced Claimants because they detrimentally relied on the Carrier's decision that they were eligible for allowances without seeking prompt verification that Claimants had actually changed their residences. It can be reasonably presumed that Claimants expended the allowances on, among other things, the rent for the accommodations at their new work locations. Suffice it to state, if Claimants knew, in Fall 1998, that they would have to give back the lump sum allowances, such knowledge would undoubtedly have influenced their spending

[8] Since Claimants did not misrepresent their true residences Oil the Carrier's official records, they do not come to this Committee with unclean hands.

decisions.

Therefore, the doctrine of laches bars the Carrier from recouping the lump sum allowances that it paid to Claimants. This Committee emphasizes that its decision on the issue of laches is restricted to the peculiar facts and circumstances in this record.

ANSWERS TO THE QUESTIONS AT ISSUE

1. The Answer to the First Question at Issue is Yes.
2. The Answer to the Second Question at Issue is No.

Date: May 24, 2001