AWARD NO. 421
Case No. SG-39-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railroad Signalmen
and
Toledo, Peoria and Western Railroad Company

QUESTION AT ISSUE: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Toledo, Peoria & Western Railroad Company:

That Mr. K. C. Carl, whose protected rate of pay under the February 7, 1965 Agreement is that of Testman Inspector, was advised that effective May 4, 1978, his rate of pay would be reduced to that of Signal Maintainer because he failed to bid on higher rated position, now requests that the protected rate of pay be paid, beginning May 4, 1978."

OPINION OF BOARD: Claimant was a protected employee under the February 7, 1965 Agreement. In April of 1978 he was receiving the rate of pay of Testman-Inspector and occupying the position of Signal Maintainer, residing in Piper City, Illinois with his assigned headquarters at Gilman, Illinois. On April 24, 1978 Carrier advertised the position of Testman-Inspector with headquarters at El Paso, Illinois and Claimant did not bid on the assignment. The position was assigned to a junior employee. Subsequently, on May 5, 1978 Claimant was notified by Carrier that due to his failure to bid on the higher rated position his protected rate would be reduced and that thereafter he would be paid the rate of the position he was assigned to: Signal Maintainer. Following this, Petitioner informed the Carrier that Piper City is forty-three miles from El Paso and the the new position of Testman-Inspector would have required Claimant to change the location of his residence. Carrier disagreed.

There is no dispute on the facts in this matter. The sole issue herein is whether a change in residence was required under the prevailing circumstances. Petitioner had taken the position, throughout the handling of this dispute, that: "Of course, any distance greater than thirty miles must constitute a change of residence under .... the February 7, 1965 Agreement." Carrier disagreed with this position.

Article IV, Section 4 of the February 7, 1965 Agreement provides:

> "If a protected employee fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position he elects to retain, he shall thereafter be treated for the purposes of this Article as occupying the position which he elects to decline."

Further, the interpretation of Article III, Section 1 developed in November of 1965 provides in pertinent part as follows:

> "When changes are made under Items 1 or 2 above which do not result in an employee being required to work in excess of thirty normal travel route miles from the residence he occupies on the effective date of the change, such employee will not be considered as being required to change his place of residence unless otherwise agreed."

The issue in this dispute has been before this Board in a substantial number of prior disputes. The approach generally taken has been to construe Article IV, Section 4, and the interpretation, as being couched in the negative. Thus, the conclusion was reached that if the change required a move of thirty miles or less an employee would not be considered as being required to change his place of residence but the language does not explicitly say when that would be required (Award 271). However, no specific standards have been established on this count. The Board so far has said that seventy miles (Award No. 134), a hundred miles (Award No. 398) and greater distances have been sufficient, per se, to require change of residence. We are now asked whether forty-three miles is in the same category.

First, we must reject the theory espoused by the Organization that any distance over thirty miles, under Article IV, Section 4, requires a change of residence. Had the parties decided to promulgate such a standard they could easily have done so since such specific standards have been included in other crafts' agreements. Clearly, the Board has no authority to establish a rule which the parties have failed to negotiate. We must take the position that each case must be evaluated on its particular facts.

A review of the facts presented in this dispute reveals no convincing evidence which would establish that a change in residence was necessary had Claimant bid on the position at El Paso. Thus, Petitioner's position relies solely on the forty-three miles commute, per se. Forty-three miles, as we view it, is marginal. An hours commute would not necessarily require a change in residence. In fact, such commute is quite common throughout the business world. However, under some circumstances, such distance could require such a change. No circumstances establishing that necessity were presented in this case. Thus, under the facts presented in this dispute, the forty-three miles, per se, does not support Petitioner's position.

AWARD

Claim denied.

I. M. Lieberman
Neutral Member

Dated: 9-17-79