PARTIES TO DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
) SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM

Claim on behalf of Duane Cisar for relocation benefits account allegedly being required to change his residence.

OPINION OF BOARD

A. Facts

On December 13, 1985 the Carrier and the Organization entered into an Employe Protective Agreement and a series of Implementing Agreements arising out of the bankruptcy proceedings involving the Chicago, Milwaukee, St. Paul and Pacific Railroad and the Carrier's acquisition of certain assets of the Milwaukee Road. Implementing Agreement #9 stated that effective December 30, 1985, the Carrier would reduce six laborers from its section crew at Humboldt Yard, Minneapolis. Claimant was one of the six laborers at Humboldt.

At the relevant time, Claimant owned his residence in Sturgeon Lake, Minnesota. After the reduction at Humboldt, Claimant exercised his seniority to a position at Glenwood, Minnesota effective February 10, 1986.[1] Glenwood is 125 miles from Humboldt. In order to get to Glenwood, Claimant had to travel 50 miles further from his residence in Sturgeon Lake than he did when he was working at Humboldt. Claimant asserts (Org. Exh. 10) that as a result of the reduction at Humboldt and his having to work at Glenwood, he kept an apartment at Glenwood in addition to owning his home.

On a Carrier memo form, by letter dated February 20, 1986, (Org. Exh. 4) Claimant wrote Carrier official T. M. Parsons:

> As my job as sec. laborer was abolished December 30, 1985 at Humboldt yard Mpls., I am now working at Glenwood yard, Glenwood Minn.
>
> Due to the abolishment I understand that I am entitled to protective benefits.
>
> As I am now working more than a 50 mile radius at Humboldt yard and further from my home I understand that I am entitled to a moving allowance.
>
> Because of all of the job cuts at this time I don't know how long can stay at Glenwood so instead of selling my house I would like to apply for the 20% lump sum of the value of my house.
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> Please advise me as to what I should do to apply for this benefit

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[1] *See* Carrier's Exh. L-1 listing the effective date of transfer as February 10, 1986.

Again, on a Carrier memo form, by letter dated March 3, 1986 (Org. Exh. 5), Claimant wrote Parsons as follows:

> I am sending a copy of certificate of title to my home as proof of ownership as described in Appendix B, option 1 so as to qualify for the Lump Sum Real Estate Settlement 3 at 20% of the fair market value.
>
> Please let me know if there is anything else I should do as to claim this benefit.

Claimant asserts that he did not receive responses to his request for the lump sum real estate settlement in lieu of the relocation allowance. Claimant further asserts that "[a]bout mid Summer 1986" he asked the Carrier's Personnel Coordinator G. F. Hugo and Hugo "told me that they were working on protection claims and did not get around to relocation allowances yet." Further according to Claimant, "[i]n the Spring of 1987 I started making phone calls and finally got an application form to fill out." *See* Org. Exh. 6. The form (Org. Exh. 7) was submitted June 8, 1987 seeking the lump sum in lieu of all other relocation benefits.

Claimant's June 8, 1987 application form was forwarded by J. L. Riddings to Parsons on July 8, 1987. *See* Org. Exh. 8. By memo dated July 31, 1987 from Parsons (Org. Exh. 9) Claimant's application for relocation benefits was not approved:

> At this time, I am not approving Mr. Cisar's request. Records in this office show that Mr. Cisar was not working when the 20 positions were abolished in December 1985. Mr. Cisar's home Section is Moose Lake Crew 221. He is not able to hold a position on Crew 221 and has generally been working relief positions on the Brooten Line.

By letter dated August 18, 1987 (Org. Exh. 10) Claimant appealed the denial contending that the information in the denial was inaccurate in that he was working at Humboldt when the abolishment occurred and that he did have to displace at Glenwood to remain eligible for protective benefits. Further, according to Claimant (*id.*):

> It is true that I work positions on the Brooten Line which is closer to home, but I must always return to Glenwood as these positions are temporary and I must keep an apartment rented at Glenwood in addition to owning a home at Denham.

Receipt of Claimant's appeal was acknowledged by Vice President Engineering Services G. A. Nilsen by letter dated August 25, 1987. *See* Org. Exh. 11. By letter dated January 8, 1988 (Org. Exh. 12) Nilsen changed the July 31, 1987 conclusion of Parsons that Claimant was not working when the positions were abolished, but again denied Claimant's request for relocation allowance:

> First of all, a review of your file indicates that you were, in fact, affected by a transaction and were working at Humboldt when positions were abolished at Humboldt, Shoreham and St. Paul in accordance with the December 13, 1985 Employe Protective Agreement. In investigating your situa-

> tion, we find that at the time there was no permanent headquartered position to which you could exercise seniority. Your claim indicates that you went to Glenwood, MN on February 10, 1986, even though your home section is Moose Lake and you could only work extra at Glenwood. Our records indicate that you have generally been working extra and relief positions on the Brooten Line and other locations on former District 3A.
>
> The Employe Protective Agreement dated December 13, 1985, requires that the claim for a relocation allowance must be made within one year of the date the employes first work at the new work location. Your file indicates that your first day of work at the new location was February 10, 1986, and it therefore does not appear that your relocation claim was filed in the one year requirement. Secondly, the Agreement requires that an employe be required to change his residence and, as a conditions [sic] of eligibility for relocation allowance, the Carrier may direct an employe to exercise seniority to a work location selected by the Railroad in order to avoid excessive multiple displacements. The Carrier is not obligated to approve the relocation allowance which provides for the benefits you are requesting and it does not appear that you have been required "change your residence".

The Organization appealed the denial on February 15, 1989 (Org. Exh. 13) pointing out that Claimant's initial claim was filed February 20, 1986. Vice President Labor Relations C. W. Nelson denied that appeal by letter dated April 15, 1988 (Org. Exh. 14) contending that "No claim for relocation allowance was filed by Mr. Cisar under date of February 20, 1986, nor did the Carrier receive any additional documentation under date of March 3, 1986." The Carrier further asserted that Claimant was not pre-approved by the Carrier; Claimant could not hold a regular position at Glenwood and worked there as an extra; the Carrier did not require Claimant to change his residence; Claimant did not actually sell his house as the Carrier views as being required by *New York Dock*.

By letter dated June 8, 1988 from Nelson (Org. Exh. 15) and after conference of May 17, 1988, the Carrier maintained its position that Claimant's application was untimely and Claimant was not otherwise entitled to the relocation allowance. After another conference on October 25, 1988, by letter dated November 23, 1988 (Org. Exh. 16) the Organization submitted further information from Claimant to Vice President Labor Relations C. F. Frankenberg. Specifically, Claimant further provided information that his initial request for relocation allowance was sent certified mail on February 20, 1986 to Parsons at P. O. Box 530 Minneapolis and that a copy of the title to his home was sent in the same fashion on March 4, 1986. The receipts for certified mail for those letters were also presented. *See* Org. Exh. 16 at 5. However, Claimant did not ask for a return receipt at the time showing that the letters were, in fact, delivered.[2]

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[2] That service offered by the Postal Service requires an additional charge.

Claimant further related a conversation he had with Hugo before sending in his claim:

> At this time before sending my claim to T. M. Parsons I talked to Gary Hugo by phone and asked about making a claim for Relocation and he said it was a new thing for them and would take time to get underway, so I made my claim to T. M. Parsons to stay with in the 30 day limit.

Claimant further contended (*see* Org. 16) that his position at Humboldt was permanent when the Humboldt positions were abolished and he also held a permanent position at Glenwood up until the Winter of 1986-87 when further cuts were made. Further, according to Claimant, Glenwood was the only place he could work at the time his request for the lump sum was made.

By letter of January 4, 1989 from Frankenberg (Org. Exh. 17), the Carrier continued to dispute the Organization's contention that Claimant had requested a relocation allowance in a timely fashion and further continued to deny the claim on previously asserted grounds. The Carrier asserted that the receipts produced by Claimant were for an address at the Carrier's downtown main offices and not the Shoreham Yard Office where Parsons worked. The Carrier also denied that Hugo spoke with Claimant as Claimant previously asserted.

In response, by letter of January 10, 1989 (Org. Exh. 18) Claimant asserted that he spoke with Hugo in April or May 1987 asking for forms he could fill out for the relocation allowance and Hugo responded that the Carrier did not have such forms. Claimant also stated that certain foreman used the same address to send mail to Parsons that Claimant used to mail his original requests for relocation allowance.

After conference of September 7, 1989 and by letter of October 2, 1989 (Org. Exh. 19), the Carrier maintained its previously stated positions denying Claimant's request. The Carrier apparently dropped its contentions that Claimant mailed his allegedly filed claims to an improper address. *See* Org. Exh. 20. However, further correspondence did not resolve the dispute with the parties maintaining their positions, including the position that the Carrier never received the request Claimant asserts he filed in February 1986. *See* Org. Exhs. 20-28.

B. Discussion

For the reasons set forth below, this claim will be sustained.

1. The Organization's Showing

The Organization has demonstrated a violation of the governing language.

First, the Employe Protective Agreement defines "Change of Residence" in the definition section as:

> (p) *"Change of Residence" means any* transfer of a work location to a point outside a 30-mile radius from the Employe's former work location and farther from the Employe's residence than was the former work location.

Claimant was one of the six laborers at Humboldt reduced from that location as a result of the transaction. The record sufficiently demonstrates that Claimant exercised his seniority but could only place into a position at Glenwood. Glenwood was 125 miles from Humboldt and 50 miles further from Claimant's residence at Sturgeon Lake than was Humboldt. The geographical parameters of the particular transfer by Claimant therefore brought him under the provisions of the definition of "change of residence" of the Employe Protective Agreement.

Second, Article 1, Section 2(a) of the Employe Protective Agreement states:

> 2. (a) Employes who are required by a Transaction to exercise their seniority to a work location at a point outside a 30-mile radius from the Employe's former work location and farther from the Employe's residence than was the former work location, in order to maintain their rights to protective benefits or preserve their existing seniority rights, shall be deemed to be required to make a Change of Residence.

Again, Claimant's seniority only allowed him to obtain a position at Glenwood. Therefore, considering the distances involved, Claimant was "*required* to make a Change of Residence" [emphasis added].

Third, Article I, Section 2(b) of the Employe Protective Agreement states:

> (b) Employes who are required to make a Change of Residence shall be entitled to a Relocation Allowance. As a condition of eligibility for a Relocation Allowance, the Railroad may direct an Employe to exercise seniority to a work location selected by the Railroad in order to avoid excessive multiple displacements. The Railroad will approve at least one relocation if the Employe is eligible to change his place of residence provided for in Article I, Sections 9 and 12 of New York Dock.

Therefore, because Claimant was required to make a "change of residence", he was therefore entitled to a relocation allowance. The language is mandatory—"Employes who are required to make a Change of Residence *shall* be entitled to a Relocation Allowance" [emphasis added].

Fourth, Article I(3) of the Employe Relocation Guidelines provides:

> 3. <u>Lump Sum Real Estate Settlement</u>
>
> An employee who owns his/her home or is purchasing his/her home may, in lieu of all benefits contained in the Appendix 1, elect the *following*:
>
> A. Each qualified homeowner electing this option will be paid twenty (20) percent of the fair market value of his home, or $20,000, whichever amount is less. In each case the fair market value shall be determined as of a date sufficiently prior to the date he is required to move to be

unaffected thereby.

B. The protected employee will be permitted to retain title to his home and will retain responsibility for any and all indebtedness outstanding against his home. The Carrier will assume no liability whatever in connection therewith.

* * *

D. The protected employee qualified to participate in this property settlement and electing this Option (1) will notify the Carrier within thirty (30) days of the date he is required to move, providing evidence of ownership

Claimant asserts that he complied with these provisions in that his first day of work at the new location was February 10, 1986; he sent a request in for a lump sum real estate settlement on February 20, 1986; and he followed up on March 3, 1986 by providing a copy of the title to his residence. The Carrier asserts that it never received those mailings and that Claimant's subsequent filing on June 8, 1987 was therefore untimely. In response, the Organization submitted copies of the receipts Claimant received from the Post Office when he mailed the letters to the Carrier. The Carrier replies that Claimant did not produce the return receipts proving delivery. The Organization responds that Claimant made inquiry of Carrier official Hugo who essentially put Claimant off.

We are satisfied that the evidence shows that Claimant submitted his request for the lump sum real estate settlement in lieu of relocation benefits in a timely fashion, particularly that he submitted his request on February 20, 1986 after beginning to work at the new location on February 10, 1986 and followed up on March 3, 1986 with a copy of his title. Claimant's production of the receipts for certified mail which he received from the Post Office when he sent the letters in February and March 1986 is sufficient to defeat the Carrier's general assertions that Claimant did not submit the request in a timely fashion.

In light of the above, the Carrier could not deny the request for relocation allowance.

2. The Carrier's Arguments.

The Carrier's well-framed arguments do not change the result.

First, the Carrier argues that this dispute was not progressed in a timely fashion. The Carrier argues (Car. Submission at 8) that the doctrine of laches applies in that the Organization did not timely progress the matter to arbitration because the Carrier did not hear from the Organization about the claim from October 6, 1989 until February 26, 1992.

There are no specific time limits governing the filing of these types of

claims. *See Union Pacific Railroad and TCU ICC (Finance Docket No. 80, 000)*, Case No. 4, (Stallworth) at 7 ("... [T]here is no precise period for filing claims which is stated in the *New York Dock Conditions*.") But, common sense dictates that disputes cannot lie dormant for years and then be raised. *Id.* ("This Committee concurs that laches may apply to claims filed under the *New York Dock Conditions* or other protective agreements in the railroad industry ....")

"[L]aches is an equitable doctrine which depends to a large extent upon the circumstances of a particular case." *Union Pacific Railroad and TCU ICC (Finance Docket No. 80, 000), supra*, Case No. 4, at 29. In the case cited by the Carrier (Car. Submission at 11--*Southern Railway and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers* (Muessig)), it is noted that an essential underpinning for a laches argument is "'bias or prejudice [to] the party against whom the claim is ultimately filed.'"

Therefore, assuming the laches doctrine does apply to these kinds of cases, the Carrier has not demonstrated that it has been subject to "'bias or prejudice'". Despite the Carrier's assertion (Car Submission at 9) that "the Carrier no longer has employment data relating specifically to the period in question ...", the necessary material documents and records have been preserved and presented to this Board. Therefore, the Carrier's laches argument, even if applicable, would not cause this Board to find this matter barred. There is nothing to otherwise show that the matter was not progressed in a timely fashion.[3]

Second, the Carrier's arguments that there is insufficient evidence to show that Claimant submitted a timely application for benefits (Car. Submission at 12 *et. seq.*) has been fully addressed above in that the evidence more than amply demonstrates that Claimant submitted his request and supporting documentation by letter of February 20, 1986 and March 3, 1986. The Carrier emphasizes (Car. Submission at 17-18) that although Claimant produced the receipts for the certified mailing of his February 20, 1986 and March 3, 1986 documents, he did not produce the verification of delivery. But, the receipts for certified mail (Org. Exh. 16 at 5) show that Claimant did not pay for the return receipt service. Granted, it certainly would have made this case much easier had Claimant asked the Postal Service to

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[3] The Organization's reliance upon local negotiations as a reason for the delay (Org. Submission at 16-17) is not a basis for rejecting the Carrier's laches argument. There has been no showing that aside from the Organization's being involved in the negotiations that there was a definitive linkage between those negotiations and the processing of this matter.

send him the green cards verifying that delivery had, in fact, been made. But, Claimant did not do so and, most significantly, there is nothing to demonstrate that such was required. Claimant has produced the copies of the requests and verification of mailing. That is sufficient for purposes of this case.

Third, the Carrier asserts (Car. Submission at 13-14 and pages following) that Claimant "was not required, ... [to] 'change his residence'". But, it sufficiently appears from the record that had Claimant not exercised his seniority to work at Glenwood after the reduction at Humboldt, he would not have been able to maintain his right to receive protective benefits. As set forth above, under Article 1, Section 2(a) Claimant was "required by a Transaction to exercise [his] seniority ... in order to maintain [his] rights to protective benefits ...." Under that section he was therefore "*required* to make a Change of Residence" [emphasis added]. Under Article I, Section 2(b) of the Employe Protective Agreement, because Claimant was "required to make a Change of Residence" as that phrase has been defined, Claimant was "entitled to a Relocation Allowance." Under Article I(3) of the Relocation Guidelines, the employee has the right to "elect" the lump sum real estate settlement. The evidence shows that in this case Claimant met all of the negotiated preconditions.

Fourth, the Carrier asserts (Car. Submission at 15-16) that according to Appendix B of the December 13, 1985 Employe Protective Agreement "'these guidelines apply to Railroad approved relocations of employes effective on or after [the] effective date of this agreement.'" The Carrier reasons that it did not give such pre-approval therefore defeating Claimant's entitlement to a the lump sum real estate settlement. The record indicates that the Carrier's reasons for denying approval were faulty and changed. When the Carrier first researched Claimant's entitlement as reflected in its July 31, 1987 memo setting forth the Carrier's then position that Claimant's request should be denied, the only basis for the denial of approval was that Claimant was "not working when the 20 positions were abolished in December 1985." *See* Org. Exh. 9. Upon receipt of information from Claimant, the Carrier acknowledged in its letter of January 8, 1988 (Org. Exh. 12) that its basis for the initial denial was incorrect. According to the Carrier, "... you were, in fact, affected by a transaction and were working at Humboldt when positions were abolished." In its January 8, 1988 letter the Carrier then took the position that Claimant's request was untimely. *Id.* But the evidence in this record shows that the request was

timely filed. The Carrier finally asserted in its January 8, 1988 letter as its basis for denial that "it does not appear that you have been required [to] 'change your residence'". But "change of residence" is a fact dictated by the language of the relevant agreement. Again, Article 1, Section 2(a) of the Employe Protective Agreement states that if an employee is required by a transaction to exercise seniority to a work location outside of the geographical parameters set forth in that section (as was Claimant) "in order to maintain [his] rights to protective benefits" then the employee "shall be *required* to make a Change of Residence" [emphasis added]. As a matter of the negotiated language, Claimant was therefore "required" to make a change of residence. It is not the Carrier who "requires" the change of residence—it is the circumstances of the exercise of seniority after the transaction affects a job that makes that requirement. Thus, the asserted reasons for the denial of "approval" were faulty. The Carrier therefore cannot rely upon the fact that it did not approve the request as a valid reason for defeating the request when its reasons for not doing so were flawed.

Fifth, most significantly with respect to the Carrier's argument that Claimant's relocation was not pre-approved by the Carrier, under the terms of the Employe Protective Agreement, the Carrier was required to approve the relocation. *See* Article I, Section 2(b) where the parties agreed that "The Railroad *will approve* at least one relocation if the Employe is eligible to change his place of residence provided for in Article I, Sections 9 and 12 of New York Dock" [emphasis added]. Examination of those cited sections of *New York Dock* show that Claimant was "eligible to change his place of residence ...."—*i.e.*, Claimant was "retained in the service of the railroad ... and, who is required to change the point of his employment as a result of the transaction ...."

Sixth, the Carrier cannot rely upon the language in Article I(2)(b) of the Employe Protective Agreement that "[a]s a condition of eligibility for a Relocation Allowance, the Railroad may direct an Employe to exercise seniority to a work location selected by the Railroad in order to avoid excessive multiple displacements." The language is not mandatory. Rather, the right given to the Carrier is optional—"the Railroad *may* direct ...." [emphasis added]. The Carrier did not exercise that option in this case and did not direct Claimant to exercise his seniority to a location other than Glenwood that would have somehow avoided the Carrier's monetary obligations under the Employe Protective Agreement.

Seventh, the Carrier also argues that

Claimant is not entitled to a relocation allowance because he "did not move." This is not a case where an employee is seeking to take advantage of the system. The record indicates that because of the transfer, Claimant had to rent an apartment at Glenwood in addition to owning his home. *See* Org. Exh. 10. But, in any event, Article I(3) of the Relocation Guidelines provides that the an employee owning a home (like Claimant) could opt for a lump sum real estate settlement "in lieu of all benefits ....". That is what Claimant did in this case. From the language presented in this record just discussed, it does not appear that a condition of entitlement to the lump sum real estate settlement under the negotiated language presented in this case is that an actual sale of Claimant's house is required as the Carrier asserts is required under *New York Dock*.

Eighth, the Carrier cannot argue that Claimant did not utilize "appropriate forms" for his request. Such is a requirement. *See* Article III(2) of the Employe Protective Agreement ("Applications for employe protective benefits under this agreement must be made in writing on appropriate forms ...."). But, the evidence establishes that Claimant spoke with Hugo in April or May 1987 about the status of his request and asked for forms to be filled out and Hugo responded that the Carrier did not have such forms. *See* Org. Exh. 18. Aside from general denials, no statement from Hugo rebuts that assertion.

Ninth, the Carrier cannot argue that even accepting Claimant's assertion that he mailed in his request by letter dated February 20, 1986, that such date is beyond a 30 day time limit given that Claimant stated that the "Date Affected" in his formal June 1987 application was December 30, 1985 (the date Claimant's job at Humboldt was abolished). *See* Org. Exh. 22. The record clearly demonstrates that the "date affected" for purposes of submitting his application was February 10, 1986 when Claimant began working at Glenwood as a result of the transaction which caused the reduction at Humboldt. Claimant's request was submitted February 20, 1986, well within the 30 day period cited by the Carrier.

Therefore, notwithstanding the Carrier's arguments, Claimant was entitled to the lump sum real estate settlement.

AWARD

Claim sustained.

Edwin H. Benn
Neutral Member

M. R. Kluska
Carrier Member

E. L. Torske
Organization Member

Dated: 11-9-93