

PUBLIC LAW BOARD NO. 1157

Award No. 33
(Case No. 33)

Parties to Dispute:

Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

and

Atlanta and West Point Railroad Co.
The Western Railway of Alabama
Seaboard Coast Line Railroad Co.

Statement of Claim:

1. Carrier violated the Agreements when it failed and/or refused to pay F. J. Tabary, Jr., clerk, Atlanta and West Point Railway Co. - The Western Railway of Alabama, for the sale of his house, 2576 Bull Run Drive, Decatur, Ga., in accordance with Section 11 of the Washington Job Protection Agreement.
2. Carrier shall be required to reimburse F. J. Tabary, Jr., for closing cost, points and commission in the amount of \$3,600.00 in accordance with Exhibit No. 3 attached hereto.

Opinion of Board:

Pursuant to Memorandum of Agreement dated February 6, 1973, between SCL-A&WP and BRAC (including provisions of Sections 10 and 11 of the Washington Job Protection Agreement), Claimant Tabary followed his work to Jacksonville, Florida, reporting for duty with the SCL. Claimant's home was appraised for the purpose of determining estimated market value; Carrier and Claimant being satisfied with the appraisal. Claimant was told to proceed with the sale, promptly contacting Carrier before any action should he be unable to sell the home for its appraised market value.

Claimant notified Carrier that he had a firm offer, pointing out that the offer was \$500 short of the agreed fair market value. Claimant was told that Carrier had decided against purchasing the property and he was advised to proceed with the sale and was furnished voucher in the amount of \$500, representing the difference between the appraised value and the purchase price obtained in the sale.

This claim is for expenses incurred in the sale by Claimant, enumerated as follows:

Revenue stamps	\$ 30.00
Brown and Reese Realty Co. (commission) . .	1,800.00
Loan Discount	285.00
Cancellation	1.00
Pilot Life Insurance Co. (Early payment penalty)	161.32
Gateway City Electric	15.00
MGIC Premium and Fee	305.00
Scott Exterminating Co.	15.00
Joseph Turpin	15.00
B. R. Lucas	15.00
Recording Assignment Fee	2.00
Disclosure Statement	50.00
Realty Tax Service	15.00
Closing Cost	862.50
Closing Cost Balance	<u>25.00</u>

\$3,596.82

It is the position of the Organization that Carrier violated sub-paragraphs 1 and 2 of Paragraph (a) of Section 11 of the Agreement of May, 1936, Washington, D.C., quoted:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing Carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing Carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the employing Carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

Carrier maintains that its sole liability lies in reimbursing the employee for any loss suffered in the sale of his home for less than its fair value, and that a Carrier's liability thereunder is in no way extended to include any additional reimbursements for expenses incurred by the employee in the sale. Carrier cites Award of Public Law Board No. 428 in support of its position.

We note the language of Award of Public Law Board No. 428 between A&WP-WA-AJT and Sheet Metal Workers. This Award takes no notice of the fact that Claimant Whittle had no alternative but to agree to the conditions attached to the transaction following "Credits to Purchaser" if he was to collect his equity and move his household with impunity. Moreover, it fails to take into account that action by the Carrier not to purchase the home forced Claimant to make the deal and accrue seller costs on the open market. For these reasons, among others, this Board does not find the Award controlling.

The history of employee protection in the industry goes to the Emergency Railroad Transportation Act of 1933, Act of June 16, 1933, ch. 91, Sections 1-17 and 209, 48 Stat. 211. This law was enacted in a time of great financial peril for the railroads. It was passed to save certain of them from bankruptcy and to perpetuate an efficient railroad system in the nation. Certain provisions of the 1933 Act provided for the appointment of a federal coordinator. Section 7(d) directed the Federal Coordinator of Railroads to require the railroads to compensate employees for financial losses caused by reason of moving to follow their work when it was transferred:

"The Coordinator is authorized and directed to provide means for the determining the amount of, and to require the Carriers to make just compensation for, property losses and expenses imposed upon employees by reason of transfers of work from one locality to another in carrying out the purposes of this title."

One month before the 1933 Act was to expire on June 17, 1936, an agreement was executed in Washington, D.C., by 85 percent of the major railroads and all of the standard railroad labor unions. It was: Agreement of May, 1936, Washington, D.C. Its purpose was to provide financial protection to employees who would be deprived of their employment or otherwise adversely affected in their employment as a result of "coordination" as Claimant Tabary was affected in the case before us.

We find that the Carrier has partially, but not fully, complied with its obligations to provide benefits due under Section 11 (a) of the Washington Agreement. We believe language of the Section compels Carrier to make Claimant whole for closing cost, points and Commissions that accrued because Carrier decided against purchasing the home.

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We refer to: "... he shall at his option be reimbursed by his employing Carrier for any loss suffered in the sale of his home for less than its fair value," and "... the employing Carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home."

We remand the question of total due Claimant, applying our findings, to the Parties. In view of the nature of the claim, we will retain jurisdiction until the resolution is made.

Findings of Board:

That the Agreement was violated.

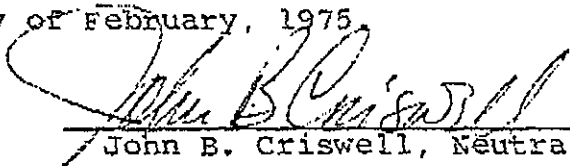
Award:

Claim sustained as outlined in Opinion of Board. Parties to resolve remedial provisions.

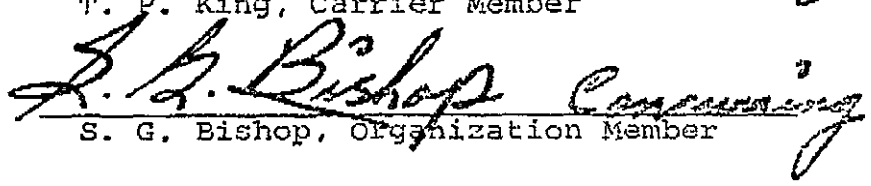
Order:

The Parties are directed to make the Award effective within thirty days from date.

Dated this 27th day of February, 1975.


John B. Criswell, Neutral Member


T. P. King, Carrier Member


S. G. Bishop, Organization Member

Parties to Dispute:

Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

and

Atlanta and West Point Railroad Company
The Western Railway of Alabama
Seaboard Coast Line Railroad Company

Interpretation No. 1 to Award No. 33, Case No. 33:

Upon application of the parties involved in the above captioned Award, this Board interprets the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934. The following interpretation is made:

The Board has considered all salient facts presented by the parties and now interpret Award No. 33 to allot monetary responsibilities as follows:

Claimant's Obligation:


Cancellation of Lein.	1.00
Revenue Stamps on Warranty deed	30.00
Pre-payment Penalty of Lein	161.32
Title Search - Fee for Title Guarantee	305.00
Recording of Warranty Deed	2.00
Past and Present Search of Taxes	15.00
Disclosure Closing Statement	50.00
Recording Intangible Tax	85.50
Survey prior to sale	75.00
One half of Appraisal Fee	7.50
Claimant's portion of Legal Services Fee	79.50
Inspection of Electrical System	15.00
Termite Inspection	15.00
Plumbing Inspection	15.00
Heating System Inspection	15.00
Long distance Telephone Charges	25.00
TOTAL	\$896.82

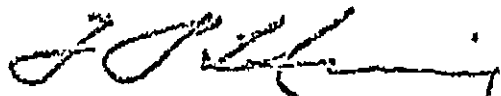
Carrier's Obligation:


Realty Company's Commission	1,800.00
Loan Discount paid to Mortgage Company	285.00
Originating Fee for Securing Loan Company	285.00
Recording Loan Deed	17.00
One-half of Appraisal Fee	7.50
Credit Report on Borrower	25.00
Photos and Amortization Schedule	11.00
Recording Assignment Fee	2.00
Carrier's portion of Legal Services Fee	267.50
TOTAL	\$2,700.00

This Interpretation was made pursuant to paragraph (I) of Agreement signed on April 30, 1973, establishing Special Board of Adjustment No. 1157.

Dated this 10th., day of June, 1975, at Atlanta, Georgia.


John B. Criswell, Neutral Member


T. P. King, Carrier Member


S. G. Bishop, Organizational Member