

PUBLIC LAW BOARD NO. 1336

PARTIES BROTHERHOOD OF RAILWAY, AIRLINE AND
TO STEAMSHIP CLERKS, FREIGHT HANDLERS,
DISPUTE EXPRESS AND STATION EMPLOYEES

VS.

ATLANTA AND WEST POINT RAILROAD CO.
THE WESTERN RAILWAY OF ALABAMA

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. Carrier violated the Agreement(s) when it failed and/or refused to pay Mrs. Emma M. Thurmond, Clerk, Atlanta and West Point Railroad Company - The Western Railway of Alabama, for the sale of her house, 3206 Pine Springs Manor, Decatur, Georgia, in accordance with Section 11 of the Washington Job Protection Agreement.
2. Carrier shall be required to reimburse Mrs. Emma M. Thurmond for closing cost, points and commission in the amount of \$5,158.85 in accordance with Exhibit No. "A", Pages 1 through 4.

FINDINGS: The Board, upon the whole record and all the evidence finds that:

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing.

Pursuant to Section 4 of the Agreement of May, 1936, Washington, D.C. (The Washington Job Protection Agreement), the Organization was notified on November 15, 1974, as amended and supplemented December 23, 1974, that Carrier intended to transfer certain accounting work to the Louisville and Nashville Accounting Office at Louisville, Kentucky. Pursuant to that notice the parties entered into a Memorandum of Agreement on February 5, 1975. Claimant's position was transferred to Louisville consistent with the provisions of the Memorandum of Agreement. It is noteworthy that, save for

certain exceptions not applicable to this dispute, that Agreement incorporated, by reference, the provisions of Sections 10 and 11 of the Washington Job Protection Agreement.

Claimant decided to follow her work to Louisville, reporting on June 2, 1975. However, she owned a home located in Decatur, Georgia, and on May 21, 1975, she advised Carrier of her desire to exercise her option under Section 11(a) of the Washington Job Protection Agreement respecting the sale of this house. Her home was appraised at \$41,450.00. Claimant received an offer of \$37,000.00 for her home and advised Carrier of same. On August 26, 1975, Carrier advised Claimant (through her Power of Attorney) to accept this offer and that it would reimburse her the difference between \$37,000, the selling price, and \$41,450, the appraised fair market value of the house. Carrier granted Claimant this \$4,450 difference. However, in consummating the sale of her house, Claimant incurred expenses in the amount of \$5,158.85, for such items as closing costs, points and commission. Claimant sought reimbursement of these settlement charges but Carrier refused. Carrier asserted that its only obligation under Section 11(a) of the Washington Job Protection Agreement was to reimburse Claimant for any loss suffered by her in the sale of her home for less than its fair value. Carrier alleges that it complied with this obligation when it granted Claimant a voucher for \$4,450. Carrier emphatically denies that it was obligated to reimburse Claimant for closing costs, points and commissions incurred by her in the sale of her house.

It is significant that this is not the first time that this precise issue has been progressed to a Public Law Board for adjudication. Award No. 33 of Public Law Board No. 1157 resolved a dispute before these same parties involving essentially the same facts, contentions and contractual provisions that are present in the claim at bar. That Award sustained the Organization's position and in a subsequent Interpretation, delineated precisely what expenses incurred by the Employee-Seller in the sale of his house must be reimbursed by the Carrier.

Inasmuch as Award No. 33 of Public Law Board No. 1157 is not palpably erroneous, this Board feels constrained to adhere to the findings stated therein. Although there is no strict principle of resjudicata in this Industry, nonetheless when faced with a prior Award between the same parties, involving essentially the same facts, contentions and contractual provisions, deference must be accorded that Award. Accordingly, although this Board is aware that other Public Law Boards, including one on this property involving the Sheet Metal Workers International Association, have rendered decisions consistent with Carrier's position herein, the findings of Award No. 33 of Public Law Board No. 1157 are, in our opinion, controlling herein.

Based on the foregoing, Carrier is obligated to reimburse Claimant for the costs incurred by her in the sale of her home consistent with the criteria enunciated by Public Law Board No. 1157, Award No. 33 and the Interpretation appended thereto.

AWARD:

Claim sustained to the extent indicated in the Findings.

Robert M. O'Brien
Robert M. O'Brien, Chairman and Neutral
Member

Dissenting:
Ralph Miller
Ralph Miller
Carrier Member

S. G. Bishop
S. G. Bishop
Organization Member

Dated this 28th day of February, 1979.