

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 41, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Richmond, Fredericksburg and Potomac Railroad Company

Dispute: Claim of Employees:

1. That all carmen who received a letter of resignation due to the incident which occurred on November 10, 1972, namely R. C. Marsh, C. B. Longerman, J. L. Halsey, T. W. Hanks, R. G. Hargiss, W. A. Parker, S. J. Romano, R. S. Loy, M. H. Adkinson, W. C. Doyle, O. E. Leicht, J. L. Palmateer, L. H. Schilling and A. F. Thibault were unjustly dismissed from the service account not being afforded a fair hearing and company requiring said carmen to work under unsafe conditions in violation of Rules 34 and 105 of the Shop Craft controlling agreement.
2. Accordingly, the above identified carmen are each entitled to be restored to service with seniority rights unimpaired, made whole for all vacation rights, for all health and welfare and insurance benefits, for pension benefits including Railroad Retirement and Unemployment Insurance and paid for all time lost, plus 6% interest per annum, commencing November 10, 1972.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants were employed as Carmen on the second shift (4 P.M. to 12 Midnight) at Carrier's Potomac Yard. This yard is one of the largest interchange points in the country and requires a large force of Carmen with various functions.

On the night of November 9, 1972, shortly before midnight, a Car Inspector was fatally injured while working on the second shift; he was between two freight cars when they coupled. Immediately after the accident the third shift worked in a normal manner and also the first shift on November 10th reported and worked normally. However, when the second shift reported on November 10th, they refused to go to work unless there was blue flag and blue light protection. These employees were told that they were engaging in an illegal stoppage. After a prolonged series of discussions, during which Carrier's representative told the Carmen that under the Agreement they were supposed to obey their superior's instructions and complain later, the men were told to either go to work or leave the premises. The entire group left the Yard.

When the third shift reported for work on November 10th, a meeting was held with the group with representatives of the Carrier and the Organization present. The discussion ended on the assertion by Carrier's representative that any men who refused to go to work under the circumstances would be considered to have quit. All the third shift Carmen went to work. The other carmen were then informed that all Car Department employees who refused to work their next shift would be considered as having quit. On November 11th, the first shift reported and worked without incident, and the second shift employees also reported and worked a normal shift with the exception of the fourteen Claimants, who refused to go to work until their demands with respect to the blue flags were met. Thereafter, each Claimant received a letter dated November 12th accepting his resignation. Two of the Claimants, Messrs. Doyle and Palmateer later furnished the Carrier with doctor's statements to the effect that they were ill and under doctor's care during the time the incidents took place.

The Organization raises the argument that the Claimants were being required to work under hazardous conditions, and by inference, this fact justified their refusal to work. As a second major point, Petitioner argues that Claimants were deprived of due process since they were not afforded an investigation as provided in the Agreement.

The safety argument is not persuasive. A system of blocking switches within a gravity hump operation apparently is more satisfactory than blue flags. Over the years no grievance or other complaint on this vital issue had ever been raised. Finally, the argument fails when it is recognized that carmen on other shifts and some carmen on the same shift as claimants returned to work under the same conditions as existed prior to the accident.

The record persuades us that Claimants had been adequately informed that if they did not return to work on November 11th they would be considered as quits. They

chose not to return to work (with the two exceptions noted above) and we find that the Carrier properly construed their behavior as resignation and terminated their employment status. In Third Division Award 10404 we said:

"The issue in this case is whether Claimants were dismissed or whether they voluntarily quit the service. If they quit their jobs, they were no longer employes and the contract they had worked under no longer covered, and of course no investigation was required."

Similarly in the case before us, since the Claimants had resigned they were not entitled to any rights under the Agreement, including the right to an investigation.

Claimants Palmateer and Doyle, as indicated above, presented medical statements to the effect that they may not have been physically able to return to service on November 11, 1972; if these statements had been presented in timely fashion, they might have created a mitigating circumstance insofar as these two Claimants were concerned. Under all the circumstances, we shall rule that these two Claimants only, be restored to service with seniority and other rights unimpaired, but without compensation for time lost while out of service. In all other respects the claim will be denied.

A W A R D

Claim disposed of in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch L.H.
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of September, 1973.