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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6374
Docket No. 6221
2-IT-MA-'72

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 154, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Machinists)
(Illinois Terminal Railroad Company

Dispute: Claim of Employee:

1. That the Illinois Terminal Railroad Company ignored and evaded the provisions of the controlling Agreement when they forced the resignation of Upgraded Machinist Joh R. Bailey, Federal Shop, Alson, Illinois, on the date of March 3, 1971.
2. That accordingly, the Illinois Terminal Railroad Company be ordered to restore Upgraded Machinist Jon R. Bailey to service with all seniority, vacation, insurance and all other rights and benefits unimpaired and to properly compensate him for all wage loss retroactive to the date of forced resignation March 3, 1971.

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.

Claimant was in the service of the carrier a little over three years. While assigned as a machinist, he took a one ton chain hoist from the property on February 26. On March 2, it was reported to the Carrier's Security Department as stolen. Routine investigation revealed that it had last been seen on the property on February 26. Examination of personnel records disclosed that claimant had laid off work when he completed his shift at 11 P.M. on February 26. The Carrier's Director of Security and another person went to claimant's home on March 3. Claimant admitted to them that he had taken the hoist and turned it over to the security man. The Director of Security informed claimant at that time that he had two choices; either to resign or to face prosecution for the theft of the hoist. Claimant then wrote out a resignation and gave it to the Director of Security without consulting anyone.

On April 1, the Organization presented the claim, alleging that carrier had violated Rules 35, 37 and 38 of the Agreement; that claimant did not steal the hoist; that he had informed a fellow employe the day he took it; that he was coerced into signing the resignation; that the resignation was deliberately forced upon claimant with the consent of management in order to avoid the provisions of the Agreement. We understand the Organization's **argument to be that the carrier has failed to observe provisions of the Agreement which provide for presentation of grievances and a hearing prior to a dismissal, has attempted to circumvent the agreement and has, in effect, created a dismissal by means of a forced resignation.**

The carrier has asserted the full meaning of a resignation, as stated in Third Division Award No. 4583, to be, "that a valid resignation terminates all the rights of an employe under a collective agreement--." Therefore, says the carrier, claimant has no remedy under Rules 35, 37, and 38 of the Agreement. Further the Carrier has argued that the allegations set forth in the Organization's claim are made by the shop chairman without any proof to support them. In its rebuttal, carrier made reference to Awards of the Third Division No. 8486, 8571, 8721, 9029, 4350, and 5891, which make findings that, "the mere statement of the Division Chairman is not evidence.", and that, in substance, the employe must submit proof so that the Board need not speculate as to the events leading to and the fact of the resignation. Carrier has asserted that the employe did not in any form retract his resignation, claim that he was coerced into signing it, or explain why he remained away from work and kept the hoist for five days until the carrier's security man came to his door. Carrier also relies upon court decisions and Award No. 1, of Public Law Board 509, to argue that there is no duress unless the threat of arrest is accompanied by action to accomplish it; and that the person must have acted under the fear of harm which is actually present, if he is to be excused from his acts, in this case, the resignation.

A review of the record and the exhibits shows that the carrier has made an impressive presentation. It is conceded that a practice of removing company property for personal use did exist but that in each instance the employe received a written permission from the foreman. The claimant did not follow this practice but did tell another employe that he was taking the hoist, Employes' Submission, Exhibit B. Neither claimant's written statement nor his resignation claim duress or coercion, Employes' Exhibits F and G. The Carrier has referred in a vague way to facts and implications, not revealed, which would hurt the employe if a full revelation became necessary, Employes' Exhibit C. Carrier has also referred to a number of First Division Awards sustaining the validity of resignations submitted by employes rather than to undergo investigation.

Confining ourselves to the facts and circumstances of this case, there is room to exercise discretion. We do not believe that the carrier attempted deliberately to avoid the Agreement. The hoist was reported stolen. Claimant being absent from work after the last day the hoist was seen on the property, became a likely suspect. The security officers did what is often done in this type of situation. However, there was a practice of allowing employes to take tools for their own use away from the carrier's property. We would have to speculate on the unexplained reasons for the five day interval and also speculate, without any evidence, as to the claimant's intentions. Legal definitions of duress and coercion are useful when there is a hearing or trial to disclose all the facts. With the little information

provided by the record, it may reasonably be stated that what is coercion to one man, may not be to another. We are all familiar with the quotation, "what is one man's meat may be another man's poison."

Much argument, logic and precedent has been set forth but only these facts have been established: Claimant took the hoist but other employes have also taken tools. Others received permission, claimant did not obtain permission but told a fellow employe. Claimant when asked, admitted he had the hoist and returned it. Claimant's past service record is a good one and he has been steadily advanced as a machinist doing a good job.

If given another chance he should know better and not leave himself open again to suspicion of wrongdoing. He should be reinstated with no back pay. In reaching this result, we rely solely on the record submitted. No contradiction is intended with regard to the relevant awards submitted for our guidance by both parties.

A W A R D

Claim sustained to the extent set forth above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1972.