

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6810
Docket No. 6644-I
2-DC-I-'75

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: { Jesse V. Page, Petitioner
{
{
{ Delray Connecting Railroad Company

Dispute: Claim of Petitioner:

Name..... Jesse V. Page
Address..... 2141 Hubbard
City and State..... Detroit, Michigan (48209
Telephone No..... 313 - 825-5108
Age..... 35 - 10-17-38
Years with Co..... 6 - 9-30-67 to 10-1-73

I want to resume my employment at the Delray Connecting Railroad Company Carshop on the hourly position of carman which I held prior to going on salary with the Company.

I also want to be reimbursed for all back wages retroactive to October 11, 1973.

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 were given due notice of hearing thereon.

Petitioner was initially hired by Carrier on July 22, 1967. He held various positions including Yard Switchman, Engine House Laborer, and Carman. On June 5, 1972 Petitioner accepted Carrier's offer of a salaried supervisory non-union position. As a result Petitioner withdrew from Local 7-358 of the Oil, Chemical and Atomic Workers International Union.

Because of alleged incidents of insubordination to his superior supervisor, Petitioner was asked to resign.

On October 1, 1973 Petitioner signed a letter of resignation that contained one sentence reading: "Please accept my resignation from the employ of the Delray Connecting Railroad Company as of this date."

Petitioner's position may be summarized as follows:

1. There was no basis or justification for Carrier's action in forcing him to resign.

2. Because of the confusion surrounding the situation and because Petitioner had had only two hours sleep, he did not read the contents of the letter of resignation before he signed it, and was therefore not bound by it.

3. After he accepted the position with Carrier, Petitioner withdrew from the Union but was issued an Honorable Withdrawal Card and he paid one month's advance union dues in accordance with Article X of the Union's International Constitution. That on October 9, 1973 the members of Local 7-358 held a special meeting and voted Petitioner back into the Union with full rights as provided for in the Union's International Constitution. As a consequence Petitioner has standing to assert his rights under the schedule agreement between Carrier and the Union.

Carrier's contentions may be summarized as follows:

1. No claim or grievance has ever been presented or progressed in the usual manner on the property under the provisions and requirements of the schedule agreement, Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. As a consequence, this Board has no jurisdiction to consider Petitioner's claim.

2. On the date that Petitioner was asked to resign, he was in a non-union, management supervisory position, and not subject to any collective bargaining agreement or any other employment agreement. In addition, the collective bargaining agreement that formerly covered Petitioner made no provision giving Petitioner the right to return to a job in the bargaining unit in the event his management job was terminated.

3. Petitioner resigned his job voluntarily as evidenced by his signed resignation. Petitioner's assertion that he did not read the one sentence resignation cannot be believed.

4. Petitioner was dismissed for good cause, but even if he were not, Petitioner has no right, under the Railway Labor Act, to challenge Carrier's decision because he was not an employee.

5. The provisions in the Union's International Constitution and the local's subsequent vote of reinstatement are matters between the Union and its membership, and are in no way binding on Carrier.

This Board is of the opinion that it must follow the mandate of scores of awards of this Board that requires procedural compliance with Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the NRAB. Failure to so comply compels a dismissal of the claim. The record in this dispute is clear that no claim was ever presented to Carrier or progressed in the usual manner as required, and the Board has no alternative but to dismiss the claim.

Even assuming, for purposes of argument, that we were able to reach the merits of the claim, the Board would deny the claim. Petitioner, effective October 1, 1973, resigned voluntarily "from the employ" of the Carrier. Prior to that resignation he was not covered by any collective bargaining agreement; and subsequent to that resignation Petitioner had no employment relationship with Carrier. There was, therefore, nothing that gave Petitioner a right to return to his craft following his resignation as a Carrier official and from the Carrier's employ.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of January, 1975.