

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Felipe Morales, Arturo Romero and Richard Hulsey)
(Southern Pacific Transportation Company (Western Lines))

STATEMENT OF CLAIM:

1. CLAIMS:

The undersigned Electrical Workers request that Carrier rescind the unconditional resignations of July 30, 1987 of Electricians R. Hulsey, F. Morales, and A. Romero, Claimants, and that Claimants be restored to service with all rights unimpaired, including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions and the loss of wages to include interest at the rate of ten (10%) percent per annum. (All as more fully set forth in Grievance dated February 15, 1989, attached hereto as Exhibit "A" and incorporated herein for all purposes.)

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 employes 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.

In May 1987, Carrier formally notified Petitioners (as well as a number of other employees) of its intent to transfer certain work and duties from El Paso, Texas, to Los Angeles, California, and Houston, Texas. Two months later, Petitioners' Organization entered into an Implementing Agreement which provided for the establishment of seven Electrician positions at Los Angeles and two at Houston to perform the work to be transferred.

Rather than transfer to either Los Angeles or Houston, Petitioners, for a variety of reasons, elected to accept payments of \$15,000 each in return for their resignations. Shortly after these resignations were effected, the work which Petitioners had been performing was transferred, as contemplated by the original notice and Agreement.

Three months later, the El Paso Diesel Shop was reopened and 10 furloughed Electrical Workers were recalled. Petitioners were not among the 10 recalled. Shortly after the recalls commenced, one of the Petitioners attempted to rescind his resignation and demanded that he be given full reinstatement. This attempt was rejected by Carrier on the basis that the resignation was voluntary; however, consideration would be given for subsequent reemployment.

Two months later, on December 28, 1987, 12 former El Paso Diesel Shop employees, including the Petitioners here, filed suit against Carrier in Federal Court attempting to have their resignations set aside and be returned to employment. The suit was subsequently dismissed for failure to exhaust remedies under the Collective Bargaining Agreement, as required by the Railway Labor Act. The matter was appealed to the Fifth Circuit, which affirmed the judgment of the District Court.

Grievances were filed on the property, which were denied on a variety of grounds and subsequently appealed to this Board.

While Carrier has raised a number of jurisdictional and procedural objections to our consideration of Petitioners' claims on their merits, which appear well placed, we nonetheless believe that an Award disposing this matter on its merits is appropriate and required.

The record is clear, Petitioners voluntarily resigned from the service of the Carrier. This fact is not disputed. Moreover, Petitioners did so in exchange for financial remuneration which they solicited as an alternative to accepting transfers to new work locations (with attendant reimbursement of expenses and job protection) as provided in an Implementing Agreement negotiated on their behalf by their Union.

They now seek to have these resignations rescinded on the basis that they were caused by misrepresentations and incorrect Agreement interpretations. Yet they have not pointed to a single misrepresentation or incorrect Agreement interpretation which supports such allegations. Instead, what is argued is that the circumstances and timing of closing and reopening the El Paso Diesel Shop manifest misrepresentation and incorrect interpretation. This is grossly inadequate to support an Award favorable to Petitioners.

Situations change. There is no showing that Carrier's decision to close El Paso was not made in good faith. An Agreement was made between the Carrier and the Organization concerning the closure. Petitioners, rather than have their continued employment at Houston or Los Angeles (or furloughed status at El Paso) controlled by the Agreement, on their own, elected to resign and accept a "buy out." There is no showing that any were improperly influenced by the Carrier or their Organization in this "buy out" decision.

Furthermore, there is no showing that a second Carrier decision, made within weeks, to reopen the shop was not made in good faith. Employees on the rosters which Petitioners had vacated as a result of their resignations were recalled. These individuals had a contractual entitlement to be recalled. Petitioners did not.

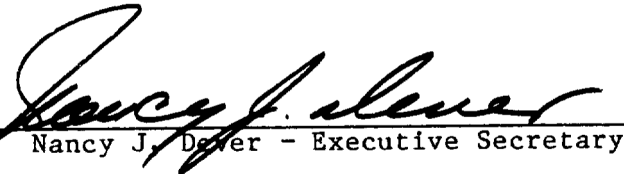
Accordingly on this record, we are without a basis to order that Petitioners' resignations be rescinded. Their claims are denied entirely as being without merit.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1991.