

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12858
Docket No. 12443
95-2-91-2-254

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo when award was rendered.

PARTIES TO DISPUTE: ((International Brotherhood of Electrical
(Workers Union, AFL-CIO
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

- "1. That on February 8, 1989 at the Roanoke Shops, VA the Norfolk and Western Railway Company applied undue pressure on Crane Operator R. W. Pedigo to force his resignation.
2. That R. W. Pedigo be compensated for the three hundred twelve days (312) he was held out of service by Labor Relations Director W. L. Allman, Jr.
3. That R. W. Pedigo be given all of his seniority lost due to Carrier holding him out of service.
4. That R. W. Pedigo be afforded the allotment of vacation due him by the amount of service he was with Norfolk and Western Railway Company.
5. That R. W. Pedigo be made whole as if he had never left the service of the Norfolk and Western Railway Company."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

It is the position of the Organization that for months prior to signing his resignation, the Claimant was subject to undue stress, duress and mental anguish caused by his supervisor and that during this period of time, the Claimant was being treated by a physician for duress. The Organization states that after repeated confrontations with the supervisor which caused him embarrassment, the Claimant signed a letter of resignation on February 9, 1989. The Organization notes that on February 10, 1989 the Claimant returned to the Carrier and tried to get his job back; and, that after considerable deliberation and discussion an agreement was reached with local management whereby the Claimant was restored to service after giving the Claimant two personal days. The Organization contends that local Management informed it that the Director of Labor Relations informed the Parties that local Management did not have the authority to put the Claimant back to work. Consequently, the Organization states that the agreement to restore the Claimant to service was aborted and the Parties engaged in year long negotiations. These negotiations culminated in the Claimant being restored to service and being placed on the bottom of the Seniority Roster of Crane operators. The Organization states that this agreement only placed the Claimant on the bottom of the Seniority Roster and that he should be afforded a vacation allotment equivalent with his 25 years of service. However, the Organization notes that the Claimant was informed on November 28, 1990 that he would only be afforded one (1) week vacation noting that this is the same allowed a new hire. The Organization states that the grievance regarding this vacation issue was filed on January 15, 1991, 48 days from November 28, 1990. The Organization states that this filing is consistent with Article V of the Agreement and Memorandum dated August 21, 1954 which requires that all claims or grievances must be presented within 60 days from the date of occurrence.

It is the position of the Carrier that the claim is procedurally defective as it was not timely progressed; that the Claimant was reinstated with a seniority date of April 23, 1990, with all benefits that attend such a seniority date; and that the incident giving rise to the grievance occurred on April 18, 1990, when the agreement was reached to return the Claimant to work. The Carrier states that the claim requests no compensation in connection with the Claimant's vacation allotment and that his vacation time is not an issue; that instead, compensation is requested for time subsequent to Claimant's resignation.

The Carrier concludes that it is evident that the trigger date for the time limits should be the date first claimed, that being February 10, 1989, the first work day following the Claimant's formal decision to quit. The Carrier concludes that this claim is procedurally flawed and should be denied in its entirety.

The Carrier also states that it has no responsibility for the Claimant's lost time in connection with his resignation from service. The Carrier states that there is no probative evidence to substantiate the Claimant's contentions that he was harassed and thereby forced to resign. The Carrier also states that there was no local agreement to reinstate the Claimant under any circumstances. On the basis of the foregoing, the Carriers states that this grievance should be denied.

The Board has reviewed the evidence and concludes that the claim should be allowed as requested. The weight of the evidence establishes that an agreement was reached between the Carrier and the Organization to restore the Claimant to service on February 10, 1989. The Carrier's decision to renege on this agreement to restore the Claimant to service does not relieve the obligation created by the agreement of February 10, 1989. Therefore, the Claim is allowed. The Claimant shall be compensated for three hundred twelve (312) days of pay he was held out of service; his seniority shall be restored due to the Carrier holding him out of service and the terms of the agreement restoring the Claimant to service dated April 18, 1990 are declared null and void pursuant to the Board's findings, above. The Claimant shall be made whole in every respect for the period he was held out of service.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.