



Award No. 5744

Docket No. 5635

2-L&W-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (CARMEN)**

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the removal of upgraded Carman Helper R. G. Barnett from his assigned position by Special Services Employes effective December 22, 1966 at 6 A.M., and the subsequent withholding of him from service, was and is improper under the provisions of the current Agreement, and
2. Accordingly, the Louisville and Nashville Railroad should be ordered to—
 - (a) Restore him to service with seniority rights unimpaired.
 - (b) Compensate him for all time lost as a result of his dismissal, and
 - (c) Pay all premiums for his hospital, surgical, medical and group life insurance benefits for the entire time he is withheld from service.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. G. Barnett, the Claimant, was employed at DeCoursey, Ky., as a Carman Helper by the Louisville and Nashville Railroad, hereinafter referred to as the Carrier, on December 13, 1965. He was working in an upgraded capacity as Car Inspector and was 26 years old at the time he was removed from his assignment by Special Services Employes.

At 11 P.M., on December 21, 1966, the Claimant reported for service on his regular assignment as Car Inspector in the DeCoursey Train Yards, at Location No. 78, and subsequent to the beginning of his tour of duty assisted other Car Inspectors in performing the necessary servicing, inspection and repair work on several trains.

Upon returning to the Car Inspectors' shanty after midnight, which was actually the early morning hours of December 22nd, the Claimant began eating his lunch. A few minutes later, one of the several L&N Special Services Employes, who were in and/or about the shanty when he

"Q. You have heard the statements made by Inspectors Carpenter and Boling do you have anything further to add?"

"A. I might verify the fact that the statement given by them are complete and true in every detail, insofar as Mr. Barnett is concerned. There was no promises, threats, force or harrassment used in order to get Barnett to sign his resignation. Barnett was given the opportunity to secure a lawyer if he desired to do so and he was advised of all of his rights. We even told Barnett that we would supply him with an attorney if he wanted one, after a few moments of meditation Barnett stated 'I'll be fired anyways, I might as well resign' and he asked if he could sign a resignation. At this time Asst. Insp. Boling typed up resignation and Mr. Barnett signed it."

The other two witnesses, Assistant Inspector H. B. Noble, Jr., and Sergeant Robert Hagar, were not present when claimant Barnett was questioned and resigned, and their testimony was limited to what they knew concerning Carman Kirk's resignation.

Carrier submits that the evidence adduced at the hearing convincingly supports the conclusion that claimant R. G. Barnett did voluntarily terminate his employment relationship with this carrier by written resignation on December 22, 1966, rather than face disciplinary proceedings and possible arrest, and that the allegations made in his affidavit of January 11, 1967, relative to being intimidated and coerced into resigning are unwarranted, unfounded and untrue. Carrier further submits that claimant Barnett and his representatives certainly should have attended the hearing, as they were requested to do, in order that claimant Barnett could have testified and been cross-examined and he and his representatives could have cross-examined the other witnesses. Their reluctance to do so is readily understandable in view of the straightforward and convincing testimony of the various Special Services Officers as to what actually transpired.

In conclusion carrier submits that the accusations made against it in handling of this dispute on the property, as shown by the correspondence attached as its Exhibit "BB", are entirely unfounded and untrue; that the claim as presented to this Board is entirely lacking in merit or agreement support; and that the claim should be denied in its entirety.

(Exhibits not reproduced)

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 here.

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

This case involves the same parties and the same issues as in Award No. 5743. For reasons stated in that Award we will sustain the instant Claim with remedy to the extent of the penalty, prescribed in Rule 34 which reads:

"... If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his

seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal.”

A W A R D

Claim sustained to the extent set forth in Findings, *supra*.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.

CARRIER MEMBERS DISSENT TO AWARDS 5743 AND 5744

The only premise on which Awards 5743 and 5744 were decided was whether the Carrier granted claimants a fair hearing.

The majority held that the discipline rules must be liberally construed and further held that if claimants resignations were brought about by coercion and duress they were then in fact disciplined—dismissed—and thus covered by Rule 34—Discipline.

The majority did not find that the claimant did resign under such conditions, however, the claims were sustained for the reason Carrier failed to conduct a hearing under Rule 34.

The claimants had voluntarily resigned their positions in the presence of witnesses. They had no charge placed against them by the Carrier nor were they disciplined for any reason.

A hearing was granted, as requested, and Carrier advised that the purpose of the hearing was to develop facts in connection with the circumstances under which the claimants resignations were submitted.

In scheduling the hearing, advance notice was given; the hearing was scheduled during regular working hours on a regular work day; an opportunity was given to the organization to attend; bring any witnesses; present any evidence and interrogate Carriers witnesses. A record was made and furnished the Organization. The hearing procedures were the same as those conducted under Rule 34.

We believe that the evidence of record when viewed must favorably for the claimants does not support the conclusions of the majority and an unreasonable Award is imposed upon the Carrier.

For these reasons we dissent.

/s/ P. R. Humphreys
P. R. Humphreys

/s/ H. F. M. Braidwood
H. F. M. Braidwood

/s/ F. P. Butler
F. P. Butler

/s/ H. K. Hagerman
H. K. Hagerman

/s/ W. R. Harris
W. R. Harris