

Parties to Dispute: { System Federation No. 7, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
Camas Prairie Railroad Company

1. That in violation of current agreement, Upgraded Carman Helper L. G. Cleveland, Lewiston, Idaho, was unjustly dealt with when on February 13, 1972 Carrier intimidated and coerced him into resigning from the service of the Carrier.
2. That accordingly, the Carrier be ordered to restore Upgraded Carman Helper L. G. Cleveland to service with all seniority, pass privileges, hospitalization, holidays, vacations, and any other rights, privileges or benefits allowable under rules, agreements, and/or laws, and compensated for all time lost (claim for lost wages to begin with the date of February 13, 1972 and to continue until claim is adjusted), and all other benefits claimed to be in accord with the Claimant's original seniority date and service rendered.

Upon returning to work following an illness, claimant reported to the Car Foreman's office at approximately 3:00 P.M., February 13, 1972. The Car Foreman thought that claimant had resigned since he had not reported his absence to him. He told claimant that he could either ask for an investigation or resign. He then gave claimant paper on which claimant wrote out his resignation. Claimant attempted to retract his resignation two hours later but Carrier would not accept it.

The issue presented for determination herein is whether claimant's resignation was voluntary or whether it was obtained by duress and coercion? There is no dispute that if it was obtained by duress or coercion then the resignation was null and void and failed to sever the employer-employee relationship. Yet if it was voluntary then the resignation could not be retracted without the concurrence of the Carrier.

It is the Organization's position that, first, Carrier violated Rule 39 of the applicable Agreement when it failed to afford him a hearing, and secondly, the resignation was void since Carrier's Car Foreman had coerced and intimidated claimant into signing it.

The pertinent facts necessary to a determination of this issue are somewhat in dispute. Claimant stated the Car Foreman, Mr. Becker, told him he had better write out his resignation from which claimant implied that if he did not he would be fired. Claimant assumed that since he failed to personally call in sick he could be fired so he felt he had no alternative but to resign. Mr. Becker contends that he merely told claimant to ask for an investigation or resign and when claimant failed to answer, he handed claimant paper on which he wrote out his resignation.

Since it is well nigh impossible to ascertain claimant's subjective state of mind at the moment he wrote out his resignation, we must make a determination of the issue at hand from facts existing at that time. The fact that Mr. Becker suggested resignation does not amount to coercion, nor does the alternative of either facing a hearing or resigning. The Organization must come forward with sufficient evidence from which we could conclude that an individual of normal sensibilities would feel compelled to resign due to coercion or intimidation by a Carrier officer. We do not feel the Organization has sustained this burden imposed upon it. Claimant himself stated that he "assumed" he could have been fired; that Mr. Becker "implied" that he would be fired; and that he wrote out his resignation feeling he had no alternative. Such does not constitute coercion, duress, or intimidation on the part of a Carrier officer. Rather, it constitutes misapprehension of the facts on claimant's behalf for which he must bear the consequences.

Nor did Carrier violate Rule 39 (Discipline) in not holding a hearing relative to this issue. That Rule guarantees that an employee will not be disciplined or discharged without first being given a hearing. It is inapplicable herein as we are not faced with a discipline or discharge but with a resignation.

Based on the foregoing we are compelled to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division