

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
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(Burlington Northern, Inc.

Dispute: Claim of Employee:

Claim of the I.A.M.A.W. that:

1. Machinist A. A. Handsaker was improperly removed from service on June 22, 1972.
2. Machinist A. A. Handsaker be compensated at the Machinists' rate for all time lost since June 22, 1972, to the date he is restored to service.
3. Machinist A. A. Handsaker be reimbursed for cost of premium for Health and Welfare and Life Insurance.
4. Machinist A. A. Handsaker be allowed interest on money due him at the rate of 6% per annum commencing with June 22, 1972, and continuing until restored to service.
5. Machinist A. A. Handsaker be restored to his regular seniority and vacation rights, sick leave and merger protective status and his record be cleared and any other rights, privileges or benefits allowable under rules or agreements.

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 waived right of appearance at hearing thereon.

On June 22, 1972, Claimant who had been in Carrier's employ approximately two and one-half years, was called into the office of the Assistant Master Mechanic at Carrier's Lincoln, Nebraska Mechanical Department, where Claimant held the classification of Machinist. According to the record, a conversation ensued between the supervisor and employe relative to an incident which has caused some notoriety for the Claimant. At some point during the one half hour Claimant was in the office, he signed and dated a typewritten letter, which apparently was handed to him by the Assistant Master Mechanic, addressed to Carrier's Master Mechanic, which reads:

"Effective this date, I wish to resign from the services of Burlington Northern, Inc."

About one and one half hour after departing the office, Claimant returned and advised the Assistant Master Mechanic that he decided to retract the resignation and that the letter he had signed earlier be returned to him. This request was denied and Claimant has been, from that day forward, kept out of Carrier's service.

Although Petitioner raises a number of alleged conditions which it contends are necessary for a resignation to be valid and binding on an employe, essentially it recognizes that an employe who voluntarily terminates his relationship with his employer, ceases to have any right to invoke any contractual entitlements or procedures. The basis for this claim is that Claimant was coerced by a representative of Management into signing the above quoted letter. It is well established in Awards of the Divisions of this Board that resignations induced by use of duress, fraud, or threats of dire consequences, will be considered involuntary acts of employes so treated and will be set aside and considered void. Awards of this Division 5743, 5744 and 6374 and Third Division Awards 6399, 8710, 10439, 11340 and 13225.

Carrier vigorously denies that the resignation was secured by use of coercion, duress, intimidation or any other means which would lead us to construe Claimant's act as involuntary. Thus the issue is drawn.

This Board has in its Awards endeavored to delineate the criteria for determination whether a resignation was voluntary or involuntary. Influence or persuasion standing alone does not amount to coercion, Third Division Award 4583. The threat that the employe will be subject to investigation and disciplinary action, has consistently been held to be insufficient to warrant reversing an employer's acceptance of a written resignation as a voluntary termination. Second Division Award 6628, Third Division Award 18476. Unlike matters in which the employer imposed disciplinary penalties upon an employe and is required to bear the burden or proving just cause therefor, when Petitioner charges improper conduct on the part of the Carrier, it is incumbent that same be supported by probative evidence. Second Division Awards 4733, 6628; Third Division Awards 18476, 10565. This cannot be established by inference, Third

Division Award 13476; nor will the subsequent attempt to retract the written resignation serve to overcome the fact that it was entered into voluntarily at the time of its execution. Third Division Award 4583.

In each of the Awards cited by Petitioner the record contained the accessory factors to satisfy the guidelines for the Board to make a finding that the resignation was procured by wrongful means. In Awards of this Division, 5743, 5744 and 6374, the claimants were subjected to lengthy interrogation by security forces of their employers. They were told that failure to resign would result in the pressing of criminal charges against them. They were denied their request to consult their representatives prior to signing the proffered documents in which they agreed to separation from their employment. Comparable facets were involved in Third Division Awards 6399 and 8710. Significantly, in each of the Awards relied upon by Petitioner the records specifically contain statements by the claimants concerning what transpired during the confrontation with Carrier representatives which impelled them to execute a document which was considered by their employer as a voluntary termination. Although we have no reason to question the veracity of the General Chairman of Petitioner that his allegations in the Organization's submission and the processing on the property stemmed from information afforded to him by the Claimant, this record is devoid of the necessary elements to satisfy the standards which this Board has established to permit a holding that coercion or duress was applied by Carrier's representative in the discussion on the morning of June 22, 1972, which resulted in Claimant signing and dating the notice of resignation. Claimant is neither a young, inexperienced or illiterate man, nor is he an old and tired person, unwilling to stand up and fight for his rights. He was at the time charged with offensive conduct by civil authorities. Thus, the Assistant Master Mechanic had no occasion to threaten prosecution. He made no demand, during the half hour he met with the supervisor that he be enabled to seek advice of his representative. We have nothing before us except Claimant's signed resignation, which was accepted when executed by an appropriate Carrier official.

Petitioner has failed to meet the burden of proof that Claimant's resignation was secured through coercion or duress, there is no basis upon which to find a violation of any of the Rules of the controlling agreement. Acceding to Claimant's desire to retract his written resignation was entirely a matter of Carrier's discretion and this Board may not substitute its views for that of the Carrier, in such circumstances.

A W A R D

Claim denied.

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Award No. 6714
Docket No. 6614
2-BN-MA-'74

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of June, 1974.

RECEIVED

JUL 9 1974

G. M. YOUHN

ETH. BN v MA
Shapiro

LABOR MEMBERS' DISSENT TO AWARD NO. 6714,

DOCKET NO. 6614

This Award is in contradiction to many sound correct awards of this Board concerning the difference between a valid or a coerced resignation. The award dictum on this issue states in pertinent part:

"* * * It is well established in Awards of the Divisions of this Board that resignations induced by use of duress, fraud, or threats of dire consequences, will be considered involuntary acts of employees so treated and will be set aside and considered void. Awards of this Division 5743, 5744 and 6374 and Third Division Awards 6399, 8710, 10439, 11340 and 13225."

Immediately after quoting these sound precedents the neutral, for reasons known only to himself and inexplicable to the Labor Members, embarks on a fishing expedition in searching for reasons and excuses as to why these sound precedents should not be applicable in this instant case.

The record irrefutably shows that the Carrier official "set the stage" for coercion in securing this resignation in that:

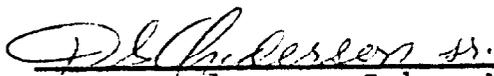
- (1) This official acted in the early hours when he knew the committee was not on duty.
- (2) This official called the claimant into his office.
- (3) This official had a typed resignation already prepared.

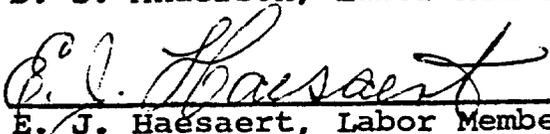
- (4) This official refused to return the resignation even before the claimant had missed one minute of his work assignment.

All of these facts portray premeditated coercion to any unbiased person seeking out the truth to render justice.

The official saw to it that there could be no witnesses and therefore who except the two participants and God himself could prove or disprove what occurred in that closed office. Therefore, the circumstances in the above listed "stage setting" should have convinced even the most dubious of the mischief afoot by this Company official. In such an erroneous award it causes wonder that perhaps even a deposition from the only witness, listed above, would have been acceptable to a majority so obviously intent upon seeking out excuses to ignore so many sound prior precedents on this issue.

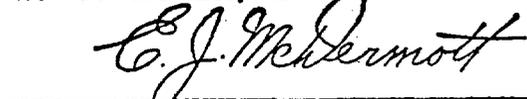
The evidence of record before this Board proves beyond a doubt that a travesty of justice has been committed by the majority. The same evidence of record irrefutably portrays that the findings and conclusions in this award are palpably erroneous, and to which we vigorously dissent.


D. S. Anderson, Labor Member


E. J. Haesaert, Labor Member


G. R. DeHague, Labor Member


W. O. Hearn, Labor Member


E. J. McDermott, Labor Member