

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

Parties to Dispute: (Abe Russell, Carman
(
(Southern Railway Company

Dispute: Claim of Employees:

In order to receive compensation for an injury sustained at Norris Yard, Birmingham, Alabama, on September 17, 1974, it is of my opinion I was unjustly coerced into submitting my resignation on March 19, 1976, from the Dept. of Mechanical as a Carman.

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 were given due notice of hearing thereon.

Claimant entered Carrier's service as a Carman in the Mechanical Department at Norris Yard, Birmingham, Alabama, on June 4, 1971. On September 17, 1974 Claimant stated that he injured his back when he slipped on some oil and grease while carrying a knuckle from a freight car. Because of his back injury, Claimant did not work from September 17, 1974 until August 7, 1975. He worked only a few days until August 16, 1975, when he again reported off due to his bad back, and never returned.

In 1975, Claimant filed a personal injury suit against Carrier, because of the alleged personal injury sustained on September 14, 1974.

In March 1976, Carrier offered through Claimant's attorney, a one Mr. Frank Burge, the option of: (1) settlement of the personal injury suit for \$30,000, or (2) settlement with resignation for \$35,000.

On March 17, 1976, Claimant sent a letter to Carrier stating that he was severing his employment relationship, and on March 22, 1976, accepted the \$35,000 settlement.

Thereafter, on April 16, 1976, Claimant filed an ex parte submission with the Second Division of the National Railroad Adjustment Board.

Claimant states that Carrier "coerced" him into accepting settlement with resignation, since Carrier waited until he had exhausted his Railroad Unemployment Compensation, and was in a financial crisis. •

Moreover, Claimant argues that Carrier only made one offer to his attorney, and that was for settlement with resignation. Since he was "down and out" Claimant feels Carrier took "unfair advantage" of him by offering \$35,000 for settlement with resignation on a job which is now paying approximately \$17,000 annually.

Claimant states that he is still under a doctor's care for his bad back, cannot get work, and is in "dire financial straits."

Carrier argues that two (2) offers were made to Claimant's attorney, one for \$30,000 in settlement of the suit, and a higher one of \$35,000 for settlement with resignation. This latter offer of \$35,000 was made by Carrier "in view of Claimant's poor work record, excessive absenteeism and disabilities both prior and subsequent to September 17, 1974."

Carrier emphatically states that no "coercion" was applied to Claimant to take the \$35,000 for settlement with resignation.

Aside from the merits, however, Carrier argues that the claim was never handled on the property, and if entertained now by this Board, would encourage all claimants to come directly to the Board, bypassing Carrier and Union appeal procedures.

While the Board can sympathize with the anguish felt by Claimant, nevertheless, the record is clear that the dispute Claimant is asserting before this Board, was not handled on the property in accordance with Rule 35 of the applicable Agreement, Section 3, First (i) of the Railway Labor Act, nor in accordance with Circular No. 1 of the National Railroad Adjustment Board. Therefore, the claim is barred from consideration by the Board, and must be dismissed. (See Second Division Awards 6992, 6953, 6941, 6874, 6829, 6810, 6555, 6520, 6505, 6496, and 6484).

Moreover, even if this claim were properly before the Board, it would still have to be denied, since there is no evidence of probative value that Claimant was "coerced" into submitting his resignation on March 16, 1976. Mere allegations and conjecture are not proof.

A W A R D

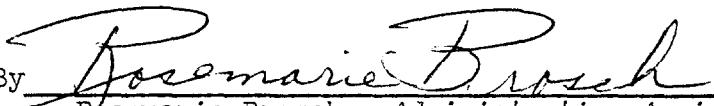
Claim dismissed.

Form 1
Page 3

Award No. 7330
Docket No. 7211-I
2-SOU-I-'77

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 12th day of July, 1977.

