

The Second Division consisted of the regular members and in addition Referee Ralph W. Yarborough when award was rendered.

Parties to Dispute: { System Federation No. 99, Railway Employees'
Department, A. F. of L. - C. I. O.
(Firemen & Oilers)
{ Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That Laborer Harold J. Rademacher was forced to resign under pressure from the Illinois Central Gulf Railroad on May 28, 1976 without being given an investigation.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to reinstate Laborer Harold J. Rademacher, with pay for all time lost, restoration of full seniority and all benefits he would have been entitled to had he not been forced to resign.

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.

Claimant, Laborer Harold J. Rademacher, entered the employment of Carrier, Illinois Central Gulf Railroad, on March 1, 1976. On May 28, 1976, Claimant Employe signed a written resignation shortly after 2:00 a.m., after having appeared for work shortly before 2:00 a.m., three hours late for his shift, which ran from 11:00 p.m., May 27th to 7:00 a.m., May 28th. Employe contends that he was forced to resign under pressure; Carrier contends with three witnesses that Employe appeared three hours late, reeking with the smell of alcohol, and was given his option of resigning or being relieved pending an investigation. Carrier contends that Employe voluntarily chose to resign, rather than face an investigation.

The complaint of organization that Employe was forced to resign without being given an investigation is somewhat muted by Employes' holographic statement (undated) that:

"Clark said something about some kind of investigation but I did not understand him at all. Then he said I'm doing you a favor by letting you quit instead of getting fired. So I thought I'd rather quit than to get fired. Clark then gave me a sheet of paper and told me to read it and to sign it if I wanted to quit. So I did without knowing I had the rite to a union representative and an investigation to back me up."

Organization contends that Employee was entitled to an investigation, which was not given, and it demands full restoration without an investigation. We are not faced with a decision on whether an investigation should have been held. Based on the Record before us, we are of the opinion that the Employee voluntarily resigned.

The short time Employee had worked for Carrier, the hour in the morning at which Employee showed up for work three hours late, his state of having consumed alcohol in such quantities as to be readily noticeable by olfactory observation (we so find), all may have contributed to a less than formal due process hearing required in a criminal proceeding, but we fail to find that it was such a violation of due process on a question of job termination, as to require Carrier to reinstate Employee to this job, with full pay for time lost, restoration of full seniority and all benefits he would have been entitled to had he not resigned.

A W A R D

Claim denied.

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 31st day of July, 1978.