

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

Parties to Dispute: { International Association of Machinists and  
Aerospace Workers  
{  
{  
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That Carrier improperly suspended Automotive and Work Equipment Mechanic R. O. Clark (hereinafter referred to as Claimant) from service on November 8, 1976, and subsequently dismissed him on November 26, 1976.
2. That Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired, with compensation for all wage loss from November 8, 1976, until restoration to service.

### 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.

This is a most unusual and interesting case. It is undisputed that on October 20, 1976, Claimant reported to his assigned work location at West Colton Receiving Yard Shop at 7:30 a.m. He drove his truck up to the shop, loaded his personal tools and belongings, turned in his keys to Carrier's shops, and verbally informed his supervisor, in so many words, that he quit. However, when the supervisor asked him to memorialize that action in a written and signed resignation, he declined to do so. His supervisor testified during the hearing that Claimant advised him he would mail in his resignation or give him one at a later date. Claimant, on the other hand, denied that he said this, and to the contrary, testified that he readily declined to sign such a note since he felt it was not necessary and that if he had intended to resign, he would have written the resignation and also agreed to sign it. Two days later, Claimant sent a wire which opened by saying: "It is with regret that I must inform you that I hereby am reporting as being off sick after having most recently suffered great and now a continuing mental anguish."

Subsequent to these events, on November 5, 1976, Carrier directed Claimant to attend a formal hearing to determine the facts and place responsibility, if any, in connection with his alleged absence from duty since October 20, 1976, which might constitute a violation of parts of Rule 810 of the General Rules and Regulations of Carrier. After the hearing, Carrier discharged Claimant, stating that it found more than substantial evidence to support its charge and that Claimant had not presented any medical evidence establishing that his alleged illness was severe enough to preclude him from working during the period under charge.

Carrier states that inasmuch as Claimant tendered a voluntary resignation, he has no rights of appeal and, even if he did, the hearing justified Carrier's termination of his services. The Union, on the other hand, states that Claimant had not resigned and that Carrier's discharge was unjust and without support. In determining the issues, we note first that a resignation, freely given, terminates the employment relationship - there have been several previous decisions of this Board directly on point. In weighing whether Claimant had any appeal rights under the agreement, we must first determine whether he, in effect, had validly resigned. While the evidence at the hearing could lead to a hairline inference that Claimant had validly resigned, we think that his action of failure and refusal to sign a resignation at the time was one indication that he was not sure that he wanted to resign - but only spoke strongly to that end. Coupled with that is the fact that two days later, he wrote a telegram to Carrier advising that he was reporting off sick. While the two events, in and of themselves, are not conclusive evidence that Claimant had not validly resigned (for, as our previous awards have held, once a resignation is tendered, it cannot, later, be rescinded), we think the fact that in this case, the Carrier proceeded to hold a disciplinary hearing on Claimant for events which occurred subsequent to the date of his alleged resignation served to recognize that, at least insofar as Carrier was concerned, Claimant still possibly had agreement rights and had not resigned. Further, Carrier conducted this hearing without any indication that it was doing so without prejudice to the position that Claimant had already resigned.

Given all the foregoing, we conclude that Carrier, in reality, did not consider that Claimant's resignation was final and valid. It should be pointed out that our conclusion is based upon the unusual facts and circumstances of this case only.

Turning to the discharge of Claimant, by letter dated November 26, 1976, we are led to conclude that more than substantial evidence adduced at the hearing of November 12, 1976 established Claimant's responsibility for the matter under charge. Claimant, asserting illness as the basis for his absence, had the burden to prove that he was too ill to work. No evidence to this effect, in the form of Medical reports or doctor's statements, appear or were presented by Claimant, leaving him without a substantive defense. His previous record with Carrier, while indicating no discipline, does indicate a propensity to stay with a job only a short period of time - he seems to have a very low tolerance level for work. Based on the foregoing,

we will reinstate Claimant to his former position with seniority unimpaired, but without compensation for time lost, and in so doing, admonish him that if he wishes to retain his employment relationship, he must realize, just as all of us in the work-a-day world, that certain work assignments are not necessarily desirable, but, they at least provide a living and must be performed without complaint, except as might be mounted under the agreement grievance procedure.

A W A R D

Claim sustained in accordance with the findings.

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 29th day of November, 1978.