

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Mechanic-in-Charge Terrence L. Young was unjustly furloughed by the carrier on May 3, 1988 when the Chicago and North Western Transportation Company violated his contractual rights.

2. That Mechanic-in-Charge Terrence L. Young be compensated for all time lost at the Mechanic-in-Charge rate of pay plus overtime and all other benefits that are a condition of employment and be restored to service. This is a continuous claim effective May 4, 1988 until claimant is restored to his position at Madison, Illinois.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

There is no dispute in this record that on April 12, 1988, Mr. R. Panice submitted a resignation form to the Carrier. Mr. Panice signed and dated the form below a statement which read:

"In order to accept an annuity under the Railroad Retirement Act, I, the undersigned, hereby voluntarily give up my rights I hold to return to the service of the Chicago and North Western Transportation Company."

Mr. Panice was thereafter permitted to take his vacation pay, although there is no evidence he ever accepted an annuity.

The Organization alleges that Mr. Panice thereafter went to work as a city employee. Following Mr. Panice's resignation, M.I.C. Snyder from Madison assumed and replaced M.I.C. Panice at Sterling, Illinois. Claimant assumed Mr. Snyder's duties at Madison, Illinois. It is the position of the Organization that Carrier violated the Agreement when it allowed Mr. Panice to return to his M.I.C. position at Sterling and thereby caused the furlough of Claimant, when Mr. Snyder returned to Madison, Illinois.

The Organization states that Mr. Panice's resignation was "final and binding." As Mr. Panice had forfeited his seniority as a Carman and was no longer an employee of the Carrier, his return to service violated numerous Rules of the Agreement. The Organization asserts that Mr. Panice's resignation was clearly accepted by the Carrier, in that he was permitted his vacation pay, and permanent, in that he left for another job.

The Carrier argues that when Mr. Panice submitted his signed resignation to Mr. Patt, ADM-Mechanical, it was refused. Mr. Patt asked Mr. Panice to reconsider while on vacation. Mr. Panice reconsidered and withdrew his request to resign. The Carrier further argues that if Mr. Panice went to work for another employer it would not have been relevant as he was on his vacation. The Carrier also argues that Claimant was called from furlough for the "temporary" vacancy of Mr. Snyder which was terminated upon Mr. Snyder's return. As the position was not permanent, Claimant had no contractual rights to it.

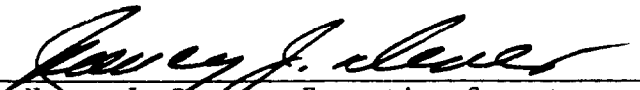
The central issue in this dispute is the status of Mr. Panice's resignation. We consider the act of a voluntary quit as a process comprising of two elements. First, there must be facts and circumstances in evidence that the resigner has initiated and presented a clear offer to permanently vacate his position. Herein, we find an offer to resign was made by Mr. Panice. Second, there must be probative evidence that the offer to resign has been finalized by the resigner or accepted by the resignee. Here we find neither. In this record, the ADM-Mechanical did not accept the resignation. Here the evidence is insufficient to consider the process completed. The vacation pay issue is not an aspect of this instant Claim and is insufficient, in and of itself, to establish a final and binding act of resignation. Nor does the Organization refute the right of Mr. Panice to work on his vacation.

We hold that Mr. Panice did not resign. The fact that Mr. Panice tendered his resignation allowed the Carrier to accept or reject any future retraction. However, the offer to resign can be timely retracted prior to acceptance or left intact and permanent by the resigner. The Carrier did accept the retraction which was timely made by Mr. Panice. Acceptance of the request to withdraw the voluntary quit resulted in Mr. Panice's failure to complete the process of resignation (Public Law Board 157, Award No. 15). The Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1991.