Award No. 10254
Docket No. TE-11876

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. In accordance with provisions of Award No. 8710, Third Division, National Railroad Adjustment Board, Carrier on April 14, 1959, granted Earl Mathis a hearing. The hearing was held before Superintendent W. W. Huckeba, as hearing officer. Decision of Superintendent Huckeba was not received within the time provided in Article 18(c) of the Agreement.

2. Carrier erred in failure to find that Earl Mathis was "unjustly treated" on August 2, 1956, in that:

(a) Earl Mathis executed a purported resignation acting under fear, duress and coercion.

(b) The purported resignation was brought about by officers of the Carrier by acts of intimidation, false accusations and threats of violence.

(c) That such purported resignation was not the voluntary act of Earl Mathis, which fact was known to or by the exercise of ordinary care, would have been known to Superintendent W. W. Huckeba, prior to its alleged acceptance.

(d) That such purported resignation was and is void, of no force and effect, and Earl Mathis was and still is an employe of Carrier subject to all provisions of the Agreement.

3. That Carrier violated the Agreement in failing and refusing to furnish transcript of investigation, although due and proper de-

mand was made therefor, in accordance with provisions of Article 18(f).

4. Carrier shall restore Earl Mathis to service with all rights unimpaired and compensate him for all time lost from April 14, 1959, (in addition to compensation granted under the provisions of Award 8710).

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between Atlantic Coast Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective November 1, 1939. This Agreement, and all subsequent agreements entered into by and between the parties, are on file with this Division and are, by reference, made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer of Carrier designated to handle such disputes and failed of adjustment. This Division, under the Railway Labor Act, as amended, has jurisdiction of the parties and the subject matter.

The dispute arose out of an incident occurring on the 2nd day of August 1956. The matter became the subject of a grievance wherein claim was filed as follows:

"1. Carrier violated the Agreement when it failed and refused to give hearing, as provided in Article 18, to Earl Mathis, account unjust treatment, upon his request therefor, in accordance with the provisions of said rule.

2. Carrier will be required to compensate Earl Mathis, at the pro rata rate of the position, agent-telegrapher, Naylor, Georgia, from the date of its refusal to comply with Article 18."

In due course that dispute was submitted to this Division as Docket TE-9358. On the 4th day of February 1959, the Board rendered Award 8710 and in its Opinion stated:

"The Claimant last worked for the Carrier on August 2, 1956. At that time, he was an Agent-Telegrapher at Naylor, Georgia, having 16 years seniority with the Carrier.

On August 2, 1956, Claimant signed a typewritten statement addressed to the Carrier's Superintendent at Waycross, Georgia, reading as follows:

'Please accept this letter as my resignation from the services of the Atlantic Coast Line Railroad Company effective today, August 12, 1956.'

Petitioner contends that this document was signed by Claimant under duress and in that connection, claim that after working hours, at about 7:30 P. M., he was 'induced' by two of the Carrier's private police officers, without an opportunity to confer with Counsel, to sign the aforementioned document by their statements that he had better resign and leave town since parents of several children he

Carrier, therefore, urges that your Board hold that the resignation signed by Mathis on August 2, 1956, was a valid one, and that the remainder of his claim, for restoration to duty, with unimpaired seniority, and with compensation for time lost, is denied.

Data in support of Carrier's position have been presented to the Employes' representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Award 8710 held that under Article 18(b) of the applicable Agreement, the Claimant was entitled to a hearing on the question of whether the resignation from the service of the Carrier which he signed on August 2, 1956, was obtained by duress. A hearing on that issue was held on April 14, 1959, and thereafter, the Carrier's Superintendent who conducted the hearing, concluded that the resignation was valid and that it terminated the Claimant's employment relationship with the Carrier on the date it was signed. The present claim is appealed here on the contentions of the Employes that the Carrier erred in failing to find that the resignation was secured by duress and coercion and that it was not voluntary on the part of the Claimant.

Careful consideration of the record discloses that this petition of the Employes rests upon an attack on the evaluation of conflicting evidence at the hearing concerning the circumstances under which the resignation was signed by the Claimant and the resolution of questions of credibility of witnesses by the Superintendent who conducted the hearing. Numerous prior awards have established that it is not within the province of this Division to weigh conflicting evidence and to determine the credibility of witnesses on appeal here. Awards 9322, 6927. For that reason, we are precluded from substituting our judgment of the evidence concerning the signing of the resignation for that of the Carrier. For the same reason, and since the record also discloses that the Carrier's finding with respect to the validity of the resignation is based on testimony of witnesses who had knowledge of the circumstances under which it was signed and were subject to cross-examination, we must conclude that the finding is supported by competent and substantial evidence even though such testimony was disputed by witnesses with similar knowledge of these circumstances.

The Employes also contend that the Carrier failed to comply with the first sentence of Article 18(c) of the Agreement which reads as follows:

> "A decision will be rendered within ten (10) days after completion of hearing."

The undisputed facts show that the hearing was completed on April 14, 1959, that the Superintendent's decision was dated April 24, 1959, and that it was received by the Claimant and the General Chairman on April 25, 1959. It is clear from these facts that the decision dated April 24, 1959 was dispatched or issued on that date. Under these circumstances, and since the provision relied on uses the word "rendered" rather than "received" or a similar word, we cannot say that the decision was not timely "rendered" under Article 18(c). See First Division Awards 16739, 16366.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1961.

DISSENT TO AWARD 10254, DOCKET TE-11876

The error of this Award is so obvious that little comment should be necessary.

Award 8710 found, among other things, that:

> "While it is not our province to determine here the duress issue, sufficient facts are presented to satisfy us that the petitioner's position on the duress point is not frivolous."

and that the claimant's request for a hearing on that question was proper and required by the controlling agreement.

The hearing held as a result of Award 8710 produced a huge mass of evidence and testimony, much of which was more or less foreign to the point at issue, the "duress issue".

The majority in the present award — the Referee and Carrier Members — says that the evidence was conflicting and that the position of the Employes, to be sustained, would require the Board to weigh conflicting evidence and to determine the credibility of witnesses, matters which it says are not within the province of this Division to resolve.

I disagree.

The transcript of the hearing consists of some 135 pages of closely typed material. It is thus not practical to discuss in detail why I disagree with the observations of the majority, citing specific references.

However, even if it be assumed that some of the testimony could be considered conflicting (which I do not agree would be proper) it would be immaterial unless the conflict had a direct relationship to the single question at issue, the "duress point" as it was styled in Award 8710.

"Duress" has been defined as:

"an actual or threatened violence or restraint of a man's person, contrary to law, to compel him to enter into a contract or discharge one."

(Williamson v. Bendix — decided April 27, 1961, 289 Fed. 2d. 389).

Also, in American Jurisprudence, Vol. 17-A, page 568, we find:

". . . any wrongful act or threat which actually puts the victim himself in such fear as to compel him to act against his will constitutes duress . . .".

The Carrier's two policemen took Claimant Mathis to the station and put him in such fear that, after resisting their efforts for some time, he finally signed the "resignation" which had previously been prepared by the policemen or some other representative of the Carrier.

The testimony on this point — the only point involved — was not conflicting. Mathis and the two policemen gave testimony showing that the actions of the latter induced such fear that Mathis' resistance to their demand that he sign the previously prepared "resignation" grew weaker and weaker until it finally collapsed, and he signed the paper.

Certainly that action was "against his will" and was induced by acts or threats of the policemen. What more was needed to prove the "duress point"?

It must also be kept in mind that the threats voiced by the Carrier's policemen were groundless, no charge of wrongdoing was ever made against Mathis by either the law enforcement agencies or the Carrier itself.

The Employes proved that the "resignation" of Earl Mathis was secured by means clearly constituting duress. Failure of the majority to give effect to the clear evidence on the only point at issue has caused an innocent man to lose his job, and this Board to lose a measure of respect to which it is entitled as an impartial tribunal for correctly settling such disputes.

The Award is clearly erroneous, and I emphatically dissent.

J. W. WHITEHOUSE
Labor Member.