

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26008

Docket Number MS-26050

George S. Roukis, Referee

(James R. Odum

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

"A. I filed a grievance because I was improperly dismissed; and the grievance that I presented was not answered or denied by K. C. Packard, Superintendent of Missouri Pacific Railroad Company, within 60 days as required by the Agreement between that company and my union.

B. On January 21, 1983 I mailed a letter, a copy of which is attached and labeled Exhibit "1", to Mr. K. C. Packard, Superintendent, Missouri Pacific Railroad Company; Mr. R. E. Ellard, General Roadmaster; and Bob Watt, General Chairman.

C. On April 13, 1983, I wrote a letter to Mr. K. C. Packard, Superintendent, Missouri Pacific Railroad Company, a copy of which is attached and labeled Exhibit "2", which complains about the failure of the company to have my investigation within the 60 day time limit. There was never any investigation pursuant to Rule 34 of the Maintenance of Way Employees Contract.

D. A letter dated April 18, 1983, a copy of which is attached and labeled Exhibit "3", from K. C. Packard, Superintendent, refers to my letter of April 13, 1983, having been received on April 15, 1983.

E. May 17, 1983, I wrote a letter to Mr. Hildebrand, General Manager, a copy of which is attached and labeled Exhibit "4". Exhibit "5" represents a copy of certified mail receipt of the grievance that was filed upon Mr. K. C. Packard by the letter which is represented by Exhibit "1". As indicated by the allegations in Exhibit "4", Mr. K. C. Packard failed to respond in any way for over 60 days.

F. I received a letter dated June 18, 1983, a copy of which is attached and labeled Exhibit "6". The letter does not deny that superintendent Packard failed to respond to the grievance within 60 days.

G. On July 28, 1983, I wrote a letter to Mr. O. B. Sayers, Director of Labor Relations, a copy of which is attached and labeled Exhibit "7".

H. On December 6, 1983, I sent a letter to Mr. O. B. Sayers, Director of Labor Relations, a copy of which is attached and labeled Exhibit "8".

I. I received a letter dated January 12, 1984, from Mr. O. B. Sayers, Director of Labor Relations, a copy of which is attached and labeled Exhibit "9". This letter denies a request for a meeting to discuss my grievance.

J. The agreement between the Missouri Pacific Railroad Company and the employees represented by the Brotherhood of Maintenance of Way Employees, of which I am a member, sets out a grievance procedure in Rules 34 and 35, a copy of which is attached and labeled Exhibits "10a", "10b", "10c", and "10c".

OPINION OF BOARD: By letter, dated September 29, 1984, the Executive Secretary of the Third Division received notice from Claimant that he intended to file an Ex Parte Submission on October 11, 1984, in connection with an unadjusted dispute between himself and Carrier. The Submission was duly filed and Claimant set forth the particulars of his grievance. In essence, he asserts that he was improperly dismissed, and additionally, charged Carrier with not answering or denying within 60 days the Claims he filed on January 21, 1983. It is his position that he was coerced into resigning from service on December 19, 1982, without Union Representation present and, as such, his resignation was forced and involuntary.

Carrier argues that the Claim is moot since he voluntarily resigned from service on December 19, 1982, thus removing himself from the protective coverage of the Controlling Agreement. It notes that he volunteered to resign from service when, at a meeting called on December 19, 1982, to discuss his problemsome situation, he recognized the impact his drinking and personal problems were having on his performance. Carrier disclaims that any of its Officials harassed or coerced him into resigning, arguing instead that he clearly indicated at the aforesaid meeting that it would be best for all if he resigned and sought reemployment at a later date. Carrier avers that since he resigned from service and was no longer an employee, there could be no violation of the Agreement.

In our review of this case, we agree with Carrier's position. We find no evidence that Claimant was forced into resigning on December 19, 1982, nor even suggestive indications that he was subtly coerced into this line of reasoning. From the record before us, it appears that he voluntarily submitted a resignation on the premise that once he resolved his personal problems, he could apply for reemployment. As the moving party in this proceeding, Claimant has the burden of establishing the invalidity of the resignation, but this requires more than unsupported assertions. In Third Division Award No. 21264, involving a conceptually similar grievance, we denied the Claim on the explicit grounds that once the effected employee voluntarily resigned, he had no further rights under the Collective Agreement. We find this decision controlling herein and the instant Claim is denied.

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 Employees involved in this dispute are respectively Carrier and Employees 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

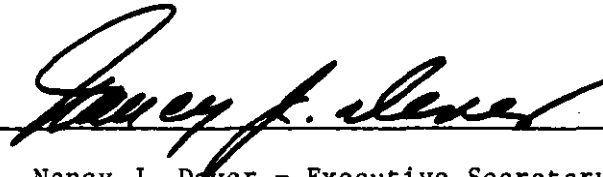
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1986.