

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31143
Docket No. MW-31751
95-3-94-3-23

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to allow Mr. S. Holloway to return to service on September 11, 1992 (Carrier's File 930064 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Holloway shall be compensated for all wage loss suffered plus benefits normally provided by the Carrier beginning September 11, 1992 and continuing until he is returned to service."

FINDINGS:

The Third 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 employee 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, after being absent for five days called his Supervisor and left the following message on the voice mail.

"Yes, Don, this is Sandy Holloway and my number is 314-686-0965 and I've been off the last five days and I want to send in my resignation. Thank You."

Claimant on the next day contacted his union representative contending that he left the wrong message, that he really wanted a leave of absence to resolve some personal problems flowing from domestic problems and a potential bankruptcy.

The Carrier has taken Claimant at his word, accepted the verbal message as a resignation and has closed the book on Claimant.

There exists nothing other than the voice mail message, which Claimant has admitted to but which he alleges to have withdrawn, also verbally, via the same voice mail. Claimant's alleged recantation, however, was not made known until better than a year after the Carrier closed out Claimant's records which is somewhat suspect. On the other hand, the Carrier never did respond to the contention of a second call 15 minutes after the first.

There is no doubt Claimant was in a state of emotional flux at the time he made the call. It is also a fact that any resignation can be withdrawn if it is done before it becomes effective, but whether that was done or not remains a question mark.

Under the circumstances, it is the decision of the Board to reinstate Claimant to service with all his seniority intact but without pay for time lost.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.