

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32063
Docket No. CL-32689
97-3-95-3-543**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11175) that:

- 1) Carrier violated the Agreement specifically Rule 10, 24 among other Rules of the Agreement, when on February 2, 1994 it arbitrarily, capriciously and in an unjust manner, removed Claimant from service without a formal investigation.**
- 2) Carrier shall now immediately reinstate Claimant and compensate him for all lost wages, commencing February 2, 1994 until such time he is reinstated."**

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 were given due notice of hearing thereon.

By letter of December 19, 1993, Claimant T. Scaramastra wrote a letter to the Carrier's District Supervisor, advising him that for various reasons, he would be resigning from Carrier's service at the end of January 1994. On January 14, 1994, Claimant wrote a letter to Carrier asking to withdraw his resignation. On January 17, 1994, Claimant called Carrier to ascertain the status of his resignation, and was told it had been accepted, effective January 30, 1994. On January 28, 1994, Carrier sent a letter to Claimant formally advising him that his resignation was accepted. Claimant received that letter on the following day. Notwithstanding, Claimant reported to work on February 1, 1994. On February 2, 1994, Claimant was informed by Carrier that the January 28th letter was the Carrier's disposition of his tender of resignation, and that he was not to report to work. At the time Claimant acknowledged that he had been told to report to work by his General Chairman. The Organization filed a claim on Claimant's behalf on February 7, 1994. That claim was denied by the Carrier and subsequently progressed in the usual manner.

It is the position of the Organization that Carrier violated the Agreement when it terminated Claimant from service. The Organization maintains that employees have the right to withdraw or rescind a resignation when there is no meeting of minds, before Carrier accepts it. According to the Organization, the Carrier could not have had a "meeting of minds" on the resignation or a mutual agreement that Claimant would leave the service of the Carrier on January 29, 1994. Thus, Carrier effectively dismissed Claimant without a Hearing, in violation of Rule 24 (Discipline) of the Agreement. In support of its position, the Organization cites Third Division Award 5124 which reads in pertinent part:

"The record is clear that the minds of the parties had not met. The Carrier did not advise Claimant of the acceptance of the resignation. Consequently there was no mutual agreement that Claimant would leave the service of the Carrier on [the date indicated]. ...The purported resignation of the Claimant never became effective under the circumstances here shown."

The Carrier maintains, first of all, that Claimant's resignation was voluntary. Accordingly, there can have been no violation of Rule 24. Further, the Carrier disputes the Organization's contention that there was no "meeting of minds" on Claimant's resignation. It points out that Claimant was told that his resignation had been accepted. (See Third Division Award 14867). Moreover, the Carrier maintains that it was well

within its rights to decline Claimant's request to rescind his resignation. In support of its position, it cites Second Division Award 6628, which reads in pertinent part as follows:

"...There is no dispute that if [Claimant's resignation] was obtained by duress or coercion then the resignation was null and void and failed to sever the employer-employee relationship. Yet if it was voluntary then the resignation could not be retracted without the concurrence of the Carrier."

There is no question on this record that Claimant had every intention of resigning when he wrote his letter of December 14, 1993. In fact, that letter contained certain complaints Claimant had regarding his treatment by Carrier and regarding the poor job attitude of his co-workers, that leave no doubt regarding his state of mind at that time. (Contrast Award 6628). The Organization has not shown beyond assertions that there was any doubt of Carrier's acceptance of Claimant's resignation. Accordingly, as is noted above in Third Division Award 6628, Claimant's retraction of his resignation could not be effected without the explicit consent of Carrier. Such consent was not forthcoming. Thus, the present claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 10th day of June 1997.