

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32770
Docket No. MW-32464
98-3-95-3-375**

The Third Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it withheld Mr. K. R. Threatt from service on June 14, 1994, failed to hold a hearing in connection therewith and then failed and refused to grant a unjust treatment hearing as requested by General Chairman M. S. Wimmer within a letter dated June 30, 1994 (System File C-12-94-A380-01/8-00206 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered beginning June 14, 1994 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 were given due notice of hearing thereon.

On June 14, 1994 the Claimant was withheld from service for allegedly threatening physical harm to a Roadmaster, among other alleged offenses. The Carrier issued a Notice of Investigation on June 16, 1994, setting the Hearing for June 22, 1994. As a result of a request by the Organization the Investigation was postponed.

The instant dispute focuses upon a telephone call between the Claimant and Carrier Steno Clerk D. Bruscatto on June 22, 1994. The Carrier asserts that in that telephone conversation the Claimant resigned his employment effective that date. The Organization interprets the conversation differently. The Organization submits that the Claimant "complained that he needed to get back to work, he had bills to pay and that if the Carrier continued to postpone the hearing process, he was going to have to quit and find another job."

On June 23, 1994 the Carrier's Manager of Engineering Maintenance, Mr. R. H. Strelesky, wrote to the Claimant advising that the Hearing site had been relocated "per mutual agreement, and will be held on Thursday, June 20, 1994" at a location in Davenport, Iowa.

Five days later, on June 28, 1994 Mr. Strelesky again wrote to the Claimant as follows:

"Please be advised that this will confirm your verbal resignation to the Engineering Office at Wood Dale, Illinois on the CP Rail System (Soo Line Railroad) effective June 22, 1994."

On June 30, 1994 BMW General Chairman Mark S. Wimmer wrote to Mr. Strelesky and requested an "unjust treatment hearing" for the Claimant in accordance with Rule 18. General Chairman Wimmer attached a seven page written statement by the Claimant dated June 27, 1994, and pointed out that the Claimant did not make reference to a resignation and that the letter indicated that the Claimant "still considers himself a Soo Line employee."

The Carrier declined the Organization's request for an Unjust Treatment Hearing on the basis that the Claimant had resigned effective June 22, 1994.

The questions for the Board are whether the Carrier (1) had the right to deny the Claimant an Unjust Treatment Hearing because of its view that as of June 22, 1994 he was no longer an employee of the Soo Line and (2) properly concluded, based upon the telephone conversation between the Claimant and Steno Clerk Bruscato, that the Claimant was no longer an employee of the Soo Line as of the date the Organization requested the Unjust Treatment Hearing.

The Carrier relies upon a memorandum to Mr. Strelesky from Steno Clerk Bruscato dated June 22, 1994. This memorandum reads as follows:

"At approximately 1440 hours this date Kevin Threatt called the Wood Dale Office. He said he was resigning from the Railroad. I told him we prefer to have resignations in writing and asked if he would please send it to Wood Dale. As I thought he could fax the resignation to our office, I asked where he was. He said he was in Memphis, Tennessee. So I asked that he mail it and he agreed.

I wished him well and he thanked me."

The Claimant's rendition of the telephone conversation is somewhat different. The Claimant writes that he "did not give a written or verbal resignation to CP Rail System;" and that during the telephone conversation with Ms. Bruscato he advised that he "needed to get back to work, because . . . (he) had lots of bills to pay . . . and if (the hearing continued to be postponed) . . . (he) would have to quit and find another job. that (he) couldn't continue on like this." The Claimant further wrote that he "never explained to her that I was gonna quit any time." The Claimant further stated in this January 11, 1995 letter that Ms. Bruscato explained the need for a resignation to be in writing in order "for it to be official."

The Board is persuaded that when Steno Clerk Bruscato's memorandum and the Claimant's January 11, 1995 letter concerning the telephone conversation of June 22, 1994 are considered together, it is clear that the Claimant did not "officially" resign his employment. Thus, the Board must conclude that Mr. Strelesky "jumped the gun" when he concluded that the Claimant was no longer an employee of the Carrier and denied him the Unjust Treatment Hearing requested by the Organization.

Accordingly, this Board further concludes that the Claimant was entitled to an Unjust Treatment Hearing and that the Carrier had the right to continue the

Investigation process regarding the charge that the Claimant had issued a physical threat and was guilty of other offenses on June 14, 1994.

The question of remedy therefore becomes contingent upon the result of the Hearings that should have been conducted. It is this Board's opinion that it would be premature to issue a monetary award at this time, because the question of the Claimant's alleged unjust treatment has not been resolved nor has the question of the Claimant's alleged inappropriate conduct on June 14, 1994 been resolved. Accordingly, the Board finds that the Claimant is still in the employ of the Carrier and that Hearings should be conducted to determine the extent to which, if any, (1) the Claimant was treated unjustly and (2) the Claimant was guilty of disciplinary infractions.

The Carrier is directed to schedule Hearings consistent with the above findings, and the claim is sustained to the extent that the Claimant is being reinstated to service with seniority and all other rights unimpaired. This Award does not contemplate that the Claimant will be returned to active service, but will retain his employment status until the issues of his alleged unjust treatment and alleged improper conduct have been heard and resolved.

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 23rd day of September 1998.