

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon—Referee

PARTIES TO DISPUTE;

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That Carrier violated the rules of the current Agreement when on April 16, 1951, it removed Mr. John R. Bumpus from service as Freight Handler at Denver without investigation.

2. That Mr. Bumpus now be restored to service with all rights and privileges unimpaired and be paid for all wage loss, retroactive to April 16, 1951.

OPINION OF BOARD: This is a discipline matter brought to this Board on behalf of John R. Bumpus, who alleges he was discharged from Carrier's employ, by its arbitrary action, without the allowance or privilege of an investigation, as provided by Rule 25 (a) of the current Agreement between the parties. The Organization is contending that the Employee was wrongfully deprived of his rights, by such action of the Carrier, and requests the Employee be restored to service with all rights and privileges unimpaired and be paid for all wage loss since April 16, 1951.

Carrier contends the Employee was not discharged as alleged, but voluntarily resigned his position, thereby relinquishing all his rights under the Agreement.

The record shows that on April 16, 1951, the Employee was taken out of service by Carrier by letter from F. O. Burke, Agent, effective the same day, on account of salvage irregularities. Nothing is indicated in the letter that such action was a suspension pending investigation. The record further discloses Claimant called upon Mr. Burke and was requested by Burke to resign his position to avoid filing of possible criminal charges against the Employee. The resignation of the Employee was made to Burke with the understanding, if restitution was made by the Employee, he would be given back his resignation. Restitution was made by the Employee, but he was not reinstated in his position.

Without any discussion as to the merits of the facts surrounding the alleged wrongful acts of the Employee and whether such acts constituted grounds for relieving the Employee from his position, the Board is of the

opinion Carrier did violate the provisions of Rule 25 (a) by arbitrarily discharging the Employee without benefit of Investigation, as provided by the Agreement. Carrier contends the Employee voluntarily resigned his position after receiving the letter of discharge from his superior, Mr. Burke. But as the record clearly shows, the Carrier, by indicating the filing of criminal charges if the resignation was not forthcoming, was an arbitrary action and the resignation was made under duress by the Carrier and on the Carrier's terms.

Carrier has completely ignored the provisions of Rule 25 (a) of the Agreement by its arbitrary action in dismissing the Employee from service without an Investigation as provided, and cannot now take the position that the Employee made a voluntary resignation from his position after he had already been relieved of his position without Investigation. We are not here concerned with what Carrier might have done had an Investigation been held. The bare fact is Carrier failed to hold the Investigation as required by the Agreement and, therefore, has violated the provisions as alleged, and Carrier should be required to comply since the Employee was arbitrarily denied his rights. See Award 3857 and supporting awards. This Board has held in numerous cases that agreements are made to be kept by the parties thereto, and Carrier is presumed to know the provisions and what it can and cannot do under the terms thereof.

Since Carrier has violated the Agreement, the claim should be sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier has violated the provisions of Rule 25 (a) of the current Agreement as alleged.

AWARD

Claim sustained in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1953.