Award No. 8710
Docket No. TE-9358

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

(1) Carrier violated the agreement when it failed and refused to give hearing, as provided in Article 18, to Earl Mathis, account unjust treatment, upon his request therefor, in accordance with the provisions of said rule.

(2) Carrier will be required to compensate Earl Mathis, at the pro rata rate of the position, Agent-Telegrapher, Naylor, Georgia, from the date of its refusal to comply with Article 18.

OPINION OF BOARD: The Claimant last worked for the Carrier on August 2, 1956. At that time, he was an Agent-Telegrapher at Naylor, Georgia, having 16 years seniority with the Carrier.

On August 2, 1956, Claimant signed a typewritten statement addressed to the Carrier's Superintendent at Waycross, Georgia, reading as follows:

"Please accept this letter as my resignation from the services of the Atlantic Coast Line Railroad Company effective today, August 12, 1956."

Petitioner contends that this document was signed by Claimant under duress and in that connection, claim that after working hours, at about 7:30 P.M., he was "induced" by two of the Carrier's private police officers, without an opportunity to confer with Counsel, to sign the aforementioned document by their statements that he had better resign and leave town since parents of several children he allegedly abused had threatened to use force against him. The Claimant accompanied the two Carrier police officers from his home to the depot and there signed the "resignation" that theretofore had been prepared by the officers. They were the only witnesses to the alleged resignation.

It is petitioner's position that Claimant is entitled to a fair and impartial hearing to determine whether or not the "resignation" document was signed under duress.

The record contains a number of signed hearsay statements, as well as an account by a very young child, all charging Claimant with improprieties of the type mentioned by the Carrier police. These charges are not before us and in any event could not be properly determined in the absence of credible relevant and competent evidence, fair cross-examination opportunity and the other safeguards that are fundamental to our system of justice and are all the more important where the infractions charged are of a nature that could invite irresponsible mob action. The record is barren of any indication that Claimant has been found guilty, or even formally indicted, by any responsible agency of the law, with respect to the alleged improprieties.

The only issue before us is whether or not Claimant is entitled to a hearing on the question of duress. Article 18 (b) of the applicable Agreement states that

> "An employe * * * who considers himself unjustly treated, shall have a fair and impartial hearing; provided written request is presented to his immediate superior within ten (10) days * * *."

The Carrier contends that Article 18 (b) requires the employe himself to request a hearing and since in the present case, the Organization and not the Claimant filed that request, petitioner has not satisfied the requirements of the Agreement and the claim must fail. There is no merit in this contention and it is abundantly clear that the Organization, as the Claimant's representative, complied in full with all time and procedural provisions of the Agreement. The Organization is the normal and proper representative of its members and there is nothing in Article 18 (b) or in any other provision of the Agreement that calls for the interpretation desired by the Carrier. Where procedural time limitations are imposed on "plaintiffs," "petitioners" or "claimants," it is well recognized that, in the absence of a clear mandate to the contrary, such parties may comply with these requirements through their proper representatives.

The Carrier further contends that once Claimant tendered his resignation, he ceased to be an employe within the meaning of Article 18 (b) and to be eligible for the benefits of that Article. However, this argument begs the entire question. It is elementary that a document is invalid if it is executed under duress or fraud. If, in the present case, it was found that the Claimant signed the "resignation" under duress, the "resignation" would be ineffective and he would still be an employe and entitled to all benefits as such. This question could very easily have been solved by a speedy, fair and impartial hearing and it is difficult to find any proper or reasonable justification for the Carrier's refusal to hold a hearing once it was requested. Certainly, it is not too onerous a burden to impose upon the Carrier to require it to hold a hearing to make certain that an injustice had not been done to one of its own employes, with 16 years service, through the possibly misplaced zeal of its police. While it is not our province to determine here the duress issue, sufficient facts are presented to satisfy us that the petitioner's position on the duress point is not frivolous.

A hearing is fundamental to our system of fair play and no valid reason is perceived for denying one in this case to determine whether or not the "resignation" document was actually voluntary and truly expressed the intent and desire of Claimant. The Carrier cannot avoid the effect of Article 18 (b) by compelling an employe who considers himself unjustly treated to accept, without a hearing, its conclusion on conflicting evidence that the employe terminated his employment by resignation. Article 18 (b) is sufficiently broad to authorize a hearing for an employe who allegedly has been coerced into resigning his position.

In the light of the foregoing considerations, an affirmative award is required. See Awards 3053 and 3100 of Third Division as well as 395 and 673 of Fourth Division. In determining compensation due the Claimant under the Award, earnings received by him since August 2, 1956, shall be deducted from his total monetary claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement and Claimant is entitled to a hearing under Article 18 (b) of the applicable Agreement.

AWARD

Claim sustained in accordance with Opinion and Findings:

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of February, 1959.

DISSENT TO AWARD NO. 8710, DOCKET NO. TE-9358

The dispute covered by **Award No. 8710** was brought before this Board on an alleged violation of Article 18 (b), "Unjust Treatment," which requires that if a hearing is desired, a Claimant must make a personal, written request to his superior officer therefor. In this case, the docket shows conclusively that the General Chairman, and not the Claimant, made the request for a hearing, charging that Claimant had been unjustly treated. The Award holds:

> "There is no merit in this contention and it is abundantly clear that the Organization, as the Claimant's representative, complied in full with all time and procedural provisions of the Agreement."

The Majority Opinion falls into error in failing to properly interpret Article 18 (b), which stipulates:

> "(b) An employe * * * who considers himself unjustly treated, shall have a fair and impartial hearing, **provided, written request is presented to his immediate superior within ten (10) days of the date of the advice of discipline** (unjust treatment), **and the hearing shall be granted within ten (10) days thereafter."** (Emphasis added; parenthetical insertion ours.)

There is no ambiguity about Article 18 (b). In unequivocal language it requires that the aggrieved employe must take the initial step, i.e., make a

written request to his immediate superior for an investigation within ten (10) days of the date of the alleged unjust treatment. The docket shows conclusively that Claimant failed to comply with the mandate of Article 18 (b); it shows that the request for a hearing was made to the Division Superintendent by the General Chairman.

Article 18 (d) stipulates:

> "(d) **At the hearing or on the appeal under Sections (b) and (c) the employe may handle his own case personally or may be assisted by an employe of his craft or by one or more duly accredited representatives.**" (Emphasis added.)

There is no ambiguity about Article 18 (d). After an employe who considers himself unjustly treated has complied with the stipulations in Article 18 (b), Article 18 (d) gives to such employe the unrestricted right to:

(1). Personally handle his own case at the original hearing or on the appeal.

(2). Be assisted by an employe of his craft at the original hearing or on the appeal.

(3). Be assisted at the original hearing or on the appeal by one or more duly accredited representatives.

Article 18 (a) deals with suspension and discharge of **employes**, therefore, it has no application to this dispute; however, it is quoted immediately below to show that it, like Article 18 (b), stipulates in unequivocal language that an employe will not be discharged without an investigation provided he (the employe involved) requests it:

> "(a) **Employes** will not be suspended without just cause, and will not be discharged without an investigation **should they request it.**" (Emphasis added.)

The above interpretation of the intent and purposes of Article 18 (b) and (d) finds support in Article 18 (a), (c), (e) and (f).

Claimant's failure to comply with the stipulations in Article 18 (b) **demanded a denial of this claim.**

The Majority Opinion cites and relies for support in sustaining this claim on **Awards 3053 and 3100** of this Division and **Awards 395 and 673** of the Fourth Division.

In **Award 3053** (Carter), the employe who considered herself unjustly treated under the provisions of Rule 53 made a timely, personal request, in writing, to her superior officer for a hearing as provided for in that rule. In sustaining the claim, Referee Carter held:

> "When the Carrier declined to recognize as true her assertions that she had no intention to and did not resign, and felt that she had been unjustly treated, Mrs. Thornhill, the Claimant, was entitled to an investigation **if requested in the manner provided for in the Agreement.**" (Emphasis added.)

The Opinion in Award 3053 supports a denial of the claim herein involved.

In **Award 3100**, Referee Shake, in denying the claim of the Employes, held:

> **"For failure of the Claimant to request a hearing within thirty (30) days from the date of the cause of his complaint, the claim must be denied."** (Emphasis added.) .

Rule 50, dealing with **unjust treatment,** was involved in **Award 3100, therefore, that Award, like Award 3053, supports a denial of the instant claim.**

See, also, Third Division **Award 4583,** by Referee Carter.

Awards 395 and 673 of the Fourth Division, when applied to the facts and rules involved in this dispute, are readily distinguishable.

Attention is directed to Section (2) of the claim, which is vague and indefinite in that it demands, **only,** that the Carrier be required to compensate Earl Mathis, at the pro rata rate of the position of Agent-Telegrapher, Naylor, Georgia, from the date of its refusal to comply with Article 18. It does not demand that the Carrier restore Claimant to the position of Agent-Telegrapher, Naylor, Georgia, with all seniority rights unimpaired, his record cleared of his resignation, and his pass and vacation privileges restored.

In the face of these facts, the Majority Opinion holds:

> "In determining compensation due the Claimant under the Award, earnings received by him since August 2, 1956, shall be deducted from his total monetary claim."

The Findings in **Award 8710** state:

> "That Carrier has violated the Agreement and Claimant is entitled to a hearing under Article 18 (b) of the applicable Agreement."

The only purpose to be served by a hearing would be to determine whether or not Claimant was unjustly treated; therefore, **Award 8710 should** be applied as contemplating—

> (a). That Claimant stands in the status of an employe who has resigned, until it is determined at a hearing under Article 18 (b), as called for in the Award, that his resignation is or is not valid.
>
> (b). That if, after a hearing, it is determined that **Claimant was not unjustly treated, then his resignation must stand, and he is due no compensation.**
>
> (c). That if, on the other hand, it is developed after a hearing that the resignation was secured under duress or force, then what compensation may be due Claimant is to be determined under the terms of the Agreement.

In the Opinion an attempt is made to introduce court procedures into the Board's handling of disputes involving discipline and unjust treatment. During the argument of this dispute it was clearly pointed out to the Referee that this Board lacks the authority of the courts in that it is not

empowered to subpoena. Numerous Awards of this Division have recognized the right of Carriers to introduce signed statements from parties other than employes of the Carrier involved, and have denied claims based thereon.

See **Award 8713**, which supports the above statement. That Award was by the same Referee who authored **Award 8710** involved in this dissent.

For the foregoing reasons, among others, **Award 8710** is in error and we dissent.

/s/ C. P. Dugan
/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ J. E. Kemp

Serial No. 202

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 8710

DOCKET NO. TE-9358

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: Atlantic Coast Line Railroad Company.

Upon application of the representatives of the Employes involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

Award 8710 was issued on February 4, 1959, and since that date the parties have engaged in considerable controversy regarding the question of Claimant's compensation. The Organization contends that Award 8710 requires that compensation be paid Claimant but the Carrier maintains that the Award involves no monetary payment and directs only that a hearing be held.

An examination of Award 8710 shows that the claim before the Board in that case alleged that Carrier violated Article 18 of the applicable Agreement by refusing to accord Claimant a hearing and that the latter was entitled to compensation from the date of such refusal. Award 8710 sustained the claim, the only qualification being that the compensation due Claimant should be reduced by the earnings he received from August 2, 1956. This is simply and clearly stated in Award 8710 and there is no uncertainty or ambiguity regarding the matter.

The violation that was found to exist in Award 8710 was Carrier's failure to accord Claimant a hearing within the ten day period prescribed by Article 18. This violation existed at the time the Award was issued and never was corrected. That a hearing subsequently and belatedly was held — on April 14, 1959 — did not remedy the violation that concerned us in Award 8710. The proceedings that led to Award 10254 have no bearing upon the instant question; they concerned an entirely different issue, namely, whether or not the hearing that finally did take place resulted in the proper decision by Carrier.

An opinion must be read in its entirety to determine its true meaning and significance. The section entitled "Findings" in Board awards rarely, if ever, lists all elements of the remedy that is considered appropriate. In the present case, the Award specifically states: "Claim sustained in accordance with Opinion and Fndings". An examination of that Opinion and those Findings in their entirety, plainly establishes that the entire claim was sustained, subject only to the above mentioned compensation deduction.

At no time during the discussion on the property or in its submissions to the Board leading up to Award 8710 did Carrier raise any question regarding compensation, although a claim for compensation was clearly set forth in the Organization's statement of claim. Accordingly, it is quite accurate, as we pointed out in Award 8710, that "The only issue before us" was whether or not Claimant was entitled to a hearing.

In our opinion, Carrier's contention that compensation is not due is merely an attempt to reargue a major point that was never put in issue in the record before the Board in Award 8710. If that contention were accepted, the Dissent would prevail over the Majority Opinion in this case.

It is entirely clear that Award 8710 found a violation of Article 18 to exist, because Carrier had failed to give Claimant a timely hearing and directed that compensation is to be paid Claimant, at the pro rata rate of his position, from August 20, 1956, the date of its refusal to hold the hearing, until April 14, 1959, less any earnings received by Claimant from August 2, 1956, to April 14, 1959. No valid basis is perceived for a contrary interpretation or contention.

Referee Harold M. Weston, who sat with the Division, as a member, when Award No. 8710 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1963.

CARRIER MEMBERS' DISSENT TO INTERPRETATION NO. 1, SERIAL NO. 202, TO AWARD NO. 8710

Division records establish that the Claimant signed a written resignation on August 2, 1956, reading:

> "Please accept this letter as my resignation from the services of the Atlantic Coast Line Railroad Company effective today, August 2, 1956."

In the proceedings leading to Award 8710, it was the Petitioner's position that Claimant was entitled to a fair and impartial hearing to determine whether or not the resignation document was signed under duress. Award 8710 held that Clamant was entitled to a hearing under Article 18 (b) of the applicable Agreement.

Following the rendition of Award 8710, a hearing was afforded Claimant and it was determined that the resignation signed on August 2, 1956, was not obtained under duress and was valid. That determination was upheld by Award 10254, rendered by this Division on December 19, 1961.

For the majority to now say that the proceedings that led to Award 10254 have no bearing upon the instant question is to ignore the basic fact that the entire dispute from its inception revolved around the validity of the Claimant's resignation.

The observation that at no time during its discussion on the property or in its submission to the Board leading to Award 8710 did Carrier raise any question regarding compensation, although a claim for compensation was clearly set forth in the Organization's Statement of Claim, ignores the fact that at every stage of the entire proceedings the Organization's claim was consistently denied by the Carrier in its entirety, thereby contesting to the ultimate the question of damages. By taking the position that Claimant was no longer an employe and not entitled to any rights under the Agreement following his resignation, the Carrier certainly put the question of damages in issue, compensation for time lost being a right arising under the Ageement.

We submit that Awards 8710 and 10254 must be considered together for an equitable determination of the dispute.

In the final analysis, the basic issue that cannot be ignored in any interpretation of either or both Awards is:

WAS CLAIMANT'S RESIGNATION VALID?

An affirmative answer to this issue renders all secondary questions regarding employe rights to hearings and rates of compensation purely academic.

The records of the Division show:

(1) August 2, 1956 — Claimant resigned effective immediately.

(2) August 11, 1956 — Employes request hearing under Agreement and reinstatement with pay for lost time.

(3) October 11, 1956 — Carrier's highest official designated to handle such claims **denied claim** in its entirety.

(4) February 4, 1959 — Award 8710 granted hearing to Claimant.

(5) December 19, 1961 — Award 10254 held resignation valid.

From this record, these conclusions are inescapable:

(1) Effective August 2, 1956, Claimant was no longer an employe of the Carrier.

(2) Carrier's denial of the claim in its entirety by definition includes the Claimant's alleged employe status, his alleged right to a hearing and his alleged right to pay for time lost.

(3) No further implementation can be given Award 8710 because Award 10254 ended Claimant's employe status effective August 2, 1956.

The interpretation is clearly erroneous and we dissent.

/s/ P. C. Carter

/s/ D. S. Dugan

/s/ W. H. Castle

/s/ T. F. Strunck

/s/ G. C. White

REPLY TO CARRIER MEMBERS' DISSENT TO INTERPRETATION NO. 1 TO AWARD NO. 8710

"It is much easier to be critical than to be correct."

Those words, spoken by Benjamin Disreali more than a hundred years ago cannot be improved upon as an observation concerning the Carrier Members' dissent.

The dissent certainly is critical but it is not correct. Its greatest fallacy lies in its ignoring the fact that the Carrier violated the clear provisions of Article 18(b) of the Telegraphers' Agreement by denying the claimant a hearing for nearly three years.

Not until the Carrier purged itself of this rule violation could its obligation to the claimant be terminated. That is the net effect of Award 8710 as correctly defined in Interpretation No. 1., Serial No. 202. The Carrier Members' dissent detracts nothing from the property of the Award or its interpretation by the Board.

J. W. WHITEHOUSE
Labor Member