

Award No. 10439

Docket No. MW-11459

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The termination of Section Laborer Manuel Luna's seniority rights with the Carrier was a violation of the effective Agreement, and in consequence thereof;

(2) Section Laborer Manuel Luna be returned to service with Seniority, vacation and all other rights unimpaired.

OPINION OF BOARD: Claimant, a Section Laborer who had been in the Carrier's service since February 15, 1942, was suspended from service on October 1, 1958, because of an incident with Roadmaster Kraemer. By letter dated October 5, 1958, Roadmaster Kraemer notified Claimant that:

"... an investigation will be held in the office of roadmaster Manly, Iowa Oct. 9, 1958 at 9:00 A.M. to develop the facts and discover cause for your swearing at, and threatening your superior at Manly, Iowa on Oct. 1 and for violation of Mtce. of Way and Structure rule N . . ."

The letter indicates that a copy was sent to the Local Chairman and also states: "P. Spain arrange to be present as a witness." Spain was a Section Foreman who was present at the incident. Because of the inability of Claimant's representative to attend, the investigation was not held on October 9. Petitioner asserts that on October 8 the investigation was postponed indefinitely by arrangement between General Chairman Cope and Superintendent's Chief Clerk Galvin and that on October 13, 1958, Galvin confirmed as satisfactory a proposal that the investigation be held on October 17, 1958. These assertions are not disputed.

Meanwhile, by letter dated October 9, 1958, Roadmaster Kraemer wrote Claimant:

"Upon request Genl-Chairman Cope investigation set for 9:00 A.M. Oct. 9-58 will be postponed until 9:00 A.M. Tuesday Oct. 14-1958."

Petitioner denies that General Chairman Cope had knowledge of this letter and there is no evidence that he did. Claimant appeared at the roadmaster's office on October 14, 1958. Roadmaster Kraemer spoke with the Claimant in the presence of Section Foreman Spain and during the conversation, the Claimant signed a document dated October 14, 1958, addressed to Superintendent Thompson, witnessed by Spain, which read as follows:

"I wish to resign from the service of the Rock Island Railroad, effective October 14, 1958, to enable me to make application to the Railroad Retirement Board for annuity, having the required length of service. I relinquish all rights to return to the service at any later date. I last performed active service on October 1, 1958. I am returning herewith all Company property."

Because Claimant signed this document, Carrier did not proceed with the investigation.

Petitioner contends that Roadmaster Kraemer's action in notifying the Claimant that the investigation was postponed to November 14, 1958 violated a good faith agreement with the Superintendent's office and that Claimant's resignation was improperly procured and is without force or effect.

Carrier contends that the Claimant's resignation on October 14, 1958 was voluntary on his part and is valid.

Petitioner attacks the validity of Claimant's resignation on the basis of the actions of Roadmaster Kraemer, including his letter to Claimant which resulted in the latter's appearance on October 14, 1958 at the roadmaster's office, and the Claimant's letter dated October 16, 1958 to the General Chairman in which Claimant asserts, in substance, that on October 14 he told Roadmaster Kraemer that he did not wish to retire and resign, that he did not read the paper because he does not read English very well, that when the paper was read to him at home, he discovered it was wrong and that he had been misled. In support of the resignation, Carrier submitted a letter dated October 27, 1958 from Roadmaster Kraemer to Superintendent Thompson which has indorsed thereon a confirmation of the contents by Section Foreman Spain. The letter sets forth Roadmaster Kraemer's version of the circumstances of the signing of the resignation by the Claimant which is at odds with the latter's statements in his letter to the General Chairman. Petitioner objects to the submission of Roadmaster Kraemer's letter on the grounds that it was never made available on the property and was submitted here in violation of Board rules.

In this posture of the record and the contentions of the parties, the validity of the claim turns on whether the Claimant signed the resignation voluntarily or as the result of duress, fraud or overreaching. As already indicated, Claimant asserts that he was misled into signing the resignation even though he stated to Roadmaster Kraemer that he did not desire to resign and retire whereas Carrier asserts that the Claimant signed the resignation on his own account. The present record does not disclose an adequate basis for us to resolve this dispute. While Roadmaster Kraemer's action in advising Claimant by letter dated October 9, 1958, without notice to the General Chairman, to appear for the investigation on October 14, 1958, the date on which the resignation was signed, although the investigation had been indefinitely postponed on October 8, 1958, by arrangement between the General Chairman and Chief Clerk Galvin, appears suspect, we may not determine the validity of the resignation on the basis of a suspicion.

For these reasons, we are of the view that a hearing pursuant to Rule 17(c) of the applicable rules Agreement is necessary. The fact that no hearing under this Rule was requested on the property does not preclude the Board from applying the rules of the Agreement for the purpose of achieving a resolution of this controversy pursuant to the obligations imposed upon it by the Railway Labor Act.

Accordingly, the claim shall be remanded to the parties for a hearing to determine the facts as to whether the Claimant signed the resignation dated October 14, 1958 voluntarily or as the result of duress, fraud or overreaching, with the right to the Petitioner, if desired, to resubmit the claim to this Division thereafter.

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 Employees involved in this dispute are respectively Carrier and Employees 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 the claim should be remanded as set forth in the Opinion.

AWARD

Claim remanded in accordance with, and as set forth in, the Opinion and Findings, with the right to Petitioner, if desired, to resubmit same.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1962.