

Award No. 18476
Docket No. CL-19017

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYEES**

**UNION PACIFIC RAILROAD COMPANY
(South-Central District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6880) that:

1. The Carrier violated the currently effective controlling agreement between the parties to this dispute when on December 12, 1969, the Superintendent refused to afford Mr. B. J. Petty the right to a formal investigation and hearing following a request from Mr. Petty's representative, the Brotherhood of Railway, Airline and Steamship Clerks.

2. Carrier shall now be required to return Mr. B. J. Petty to the service of the Carrier, make payments of premiums due under Travelers Group Policy GA-23000 and dues to the Union Pacific Railroad Employees Hospital Association, and beginning December 8, 1969, compensate Claimant for one day's pay for each day of employment denied to him by the action of the Carrier on a continuing basis.

OPINION OF BOARD: The Claimant, B. J. Petty, Cashier at Provo, Utah, on December 8, 1969, signed a letter resigning from the service of the Carrier "in order for me to apply for my annuity due to years of service and age."

By letter from Paul J. Meier, Vice General Chairman, dated December 10, 1969 the Organization made timely request for an investigation and hearing under Rule 45 (d) alleging that "Mr. Petty was improperly coerced into resigning his position."

The Carrier responded by stating that the resignation was signed of his own free will and accord; that as an ex-employee he had no standing or rights under the contract to avail himself of the provisions of Rule 45 (d).

A series of letters exchanged by the parties maintained these initial positions in processing the dispute to this Board. No corroborative evidence is in the record in support of either parties position. The Organization states

that the Claimant was coerced because of a pre-prepared letter of resignation offered to him on December 8, 1969. The Carrier states that he signed the resignation letter as an alternative, freely offered, to a charge of insubordination, placing him out of service until an investigation and hearing could be completed, as provided by Rule 45.

The Board is here confronted with a meager record from which to determine whether the Claimant was denied "due process" in its simplest terms and meaning by the refusal of the Carrier to avail him of the investigative and hearing mechanism provided in Rule 45 (d). The Organization simply has alleged the treatment of the Claimant at the time of, and following his execution of the letter of resignation, to be unjust and coercive. The Carrier simply states that the Claimant had no entitlement to the use of the procedures of Rule 45.

Under normal and usual circumstances, it cannot be said that the making of a threat of discipline to an employee is of itself coercive and thus, places him under duress which could or did result in his resignation, relinquishment of seniority rights, or any other act on his part taken for the purpose of avoiding possible discipline. One must know the circumstances, supported by probative evidence, under which the employee took such action do justice to the claims of the parties. In the case before us there were no witnesses present and there is available to the Board only the Carrier's version of the events of December 8, 1969 and those occurrences which preceded beginning December 4 or 5. On the other side, it is simply not enough for the Organization to infer coercion and duress by reason of the alternate choices offered the Claimant.

Here, an investigation and hearing were denied the Claimant on the single premise that he was no longer an employee after December 8, 1969. In the Awards on which the Organization places great emphasis and from which it quotes at length, the fact situations were not parallel to the instant case. In each instances, investigation and hearings were initiated and scheduled while the Claimant retained employee status. Thus, at least one of the pivotal facts in the instant case was not at issue in the cases cited.

It is the opinion of this Board that the burden of proof rests with the Organization to show beyond a reasonable doubt that the Claimant was coerced into signing a letter of resignation and that he did so under duress on December 8, 1969. This cannot be established by inference (the pre-prepared letter offered to the Claimant) or by the confrontation of threatened disciplinary action as an alternative to his resignation.

This is not a discharge case where the burden lies with the Carrier to show just cause. The Claimant terminated his employee status by letter signed by him. The Organization has not persuasively shown that such termination was effected through fraud, deceit, or misunderstanding of the consequences, nor that it was effected through coercion and duress.

In the light of the record before the Board and having given due consideration to the position of each party as therein contained, the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.

LABOR MEMBER'S DISSENT TO AWARD 18476 (DOCKET CL-19017) (Referee Rimer)

The Referee erred in his decision in this dispute.

The last three paragraphs of the Referee's Opinion reads as follows:

"It is the opinion of this Board that the burden of proof rests with the Organization to show beyond a reasonable doubt that the Claimant was coerced into signing a letter of resignation and that he did so under duress on December 8, 1969. This cannot be established by inference (the pre-prepared letter offered to the Claimant) or by the confrontation of threatened disciplinary action as an alternative to his resignation.

This is not a discharge case where the burden lies with the Carrier to show just cause. The Claimant terminated his employe status by letter signed by him. The Organization has not persuasively shown that such termination was effected through fraud, deceit, or misunderstanding of the consequences, nor that it was effected through coercion and duress.

In the light of the record before the Board and having given due consideration to the position of each party as therein contained, the claim must be denied."

Perhaps we are not aware of the meaning of the words "coercion" and "duress", but Superintendent Brandt's letter of September 24, 1969 addressed to the Vice General Chairman reads, in part, as follows:

"Trainmaster Davis did meet with Mr. Petty December 8th and informed him of the charges that had been brought against him and also informed him that it would be necessary to hold a formal investigation, that he would be withheld from service pending investigation, and if charges were sustained, he would be dismissed from company service.

Mr. Petty then stated he had worked for the Union Pacific approximately 50 years with an unblemished record and rather than have charges brought against him, requested permission to resign for the purpose of retirement. Mr. Davis did have a written resignation with him as it was felt that due to Mr. Petty's age and clear record, he would possibly prefer to take this course of action.

Mr. Davis did not at any time ask for Mr. Petty's resignation, nor coerce him in any way."

General Manager Cunningham's letter of March 23, 1970 addressed to the General Chairman reads in part as follows:

"When he was confronted with the charge of insubordination by Trainmaster Davis, it was explained to him that since the insubordination charges had been brought against him by the Agent, the Company intended to hold a formal investigation on these charges and withhold him from service pending such investigation. Mr. Petty at that time declined to accept the formal investigation procedure, and on his own volition stated he had worked approximately 50 years with an unblemished record and rather than have these charges brought against him, he would rather take his retirement, at which time Trainmaster Davis handed him four copies of a resignation which had been prepared in advance in anticipation of this action by Petty. Trainmaster Davis stated he had the resignation prepared in advance primarily because he was unfamiliar with the type of form needed to secure a resignation from an employee. One need not be clairvoyant to predict that a man in Petty's status, 72 years of age and fully eligible for retirement, would choose to accept retirement rather than take the recourse of facing a formal investigation.

My file contains a signed statement from Trainmaster Davis indicating that at no time did he intimidate Mr. Petty or threaten to fire him if he did not retire. The signing of the resignation was strictly Mr. Petty's choice and Davis did not mention resignation or retirement to him at any time during his conversation with him about the insubordination charge. * * *."

Using Carrier's language, the undersigned submits that "one need not be clairvoyant" to see just how Carrier managed to obtain the resignation. Carrier had the audacity to say this man was not coerced, intimidated, threatened with dismissal and pressured into signing a resignation which the Trainmaster just happened to have with him—four copies no less—all signed, sealed, acknowledged by the Superintendent, initialed by the Trainmaster, and waiting for delivery.

The General Manager further stated:

" * * * Certainly, a man of Petty's broad experience and knowledge would not be persuaded against his wishes, unless by some devious means he hoped to gain restitution for his error. * * *."

Using the word "devious" with regard to Mr. Petty, under the admitted method Carrier utilized in gaining a resignation, certainly reaches the epitome of intestinal fortitude.

If, as Carrier contends, Claimant Petty resigned of his own volition, one would think that Claimant could and would have written his own resignation.

It is obvious that Claimant Petty was coerced into resigning and that he signed four (4) copies of his "resignation" under duress.

I dissent.

C. E. Kief
Labor Member