

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19556
Docket Number MW-19707

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Elgin, Joliet and Eastern Railway Company

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

(1) The resignation of Kirk Yard Welder (Grinder) T. Kotakis (Account No. 67085) on October 1, 1970 was obtained through coercion and duress and it was thereby invalid (System File TG-2-70/VM-1-70).

(2) Welder (Grinder) Kotakis be reinstated with all rights unimpaired and compensated for all wage loss suffered because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: Claimant was employed by Carrier in 1956. He was a Greek immigrant, having come to this country during World War II. On September 30, 1970 his position as a welder was abolished and he was to begin work as a grinder the following day. On the afternoon of September 30 Claimant accepted a ride in the automobile of a fellow employee, Krinakis, for the purpose of returning certain welding equipment to a welding shop located some distance away, but still on the property. Krinakis was also Greek. While enroute to the welding shop, the car stopped and the men got out and picked up a large brass bearing (60 lbs) from the side of the road; while it was in their possession they were approached by Steel Company Security Guards and questioned. At this point Claimant "ran off" allegedly seeking an interpreter and upon returning found that everyone had left. The record indicates substantial conflict and contradictory statements concerning the details of the incident, however all parties would agree generally with the version above.

Claimant and Krinakis were advised to report to the office of the Division Engineer the following morning. What transpired in that office is in dispute. In addition to the Division Engineer, who acted as spokesman, there were two other company officers present, including one who acted as an interpreter. Claimant contends that they were told that they could resign or face criminal charges and jail. Carrier claims that they were told that a hearing concerning the incident would be held, or if they preferred to avoid the possibility of disciplinary action appearing on their personnel records they could resign. Both men signed resignations.

The Organization argues that the Carrier violated Rule 59 (b) by not informing Claimant of his rights under that Rule. The Rule reads:

"The right of any employee to have a duly authorized representative of the Brotherhood of Maintenance of Way Employees represent him in the handling of grievances under the recognized interpretation placed upon the schedule by officials of the railroad and the general committee is conceded."

We do not agree. Rule 59 (b) required no mandatory action by Carrier; Claimant made no request for representation on October 1st.

Petitioner also alleges that Carrier violated Rule 21 (a) in not providing Claimant with a fair and impartial hearing. The Rule provides that an employee must have "due process" - an impartial hearing - prior to discipline or dismissal. Since we are dealing with a resignation rather than a dismissal, this argument begs the question and must be rejected.

The Carrier raises the issue that the Claim before the Board is not the Claim handled with the highest appeals officer on the property, and hence requests dismissal on procedural grounds. Since the facts upon which this claim is based are far from clear and unequivocal, we shall make no further comment on this matter, and proceed to the merits.

The crux of the matter is whether Claimant's resignation was obtained through coercion and duress. Claimant's guilt or innocence with respect to the alleged theft, and all other related issues, are immaterial. There are three versions of the conversation on the morning of October 1st. The Division Engineer stated:

"I personally specifically told Mr. Kotakis and the other individual involved that a hearing concerning the incident would be held, or if they preferred to avoid the possibility of disciplinary action appearing on their personnel record they may resign. To insure that they understood, I had Mr. Vorgias repeat my statement in Greek, and again both men indicated that they chose to resign. Resignations were prepared and before they were signed I again asked them in English if they were sure this was what they wanted to do. Each answered in the affirmative to me as well as to Mr. Vorgias who repeated my statement in Greek....."

Mr. Krinakis, by affidavit, reported the same conversation:

"We were then taken to Mr. Danngerman, the chief engineer, and two forms were placed on the desk in front of us and the forms were blank. We were told that either we signed the forms resigning our jobs or else we would be fired and our records would show we were fired for stealing company property. We were told that if

"we resigned our records would be clear and no information would be given as to the reason for our resignations. If on the other hand we refused to resign, charges would be filed against us for theft and we would be fired and a hearing held before the union and our records would indicate that we were fired for stealing company property. This conversation was with Mr. Danngerman, the chief engineer of the E.J. & E. We signed the resignations and left the office."

Claimant reported the conversation as follows:

"This is to advise all concerned on October 1, 1970, I, T. Kotakis, account No. 67085, while in the presence of company officials, was coerced into signing my name to a letter of resignation. This was done, when a company supervisor who acted as an interpreter, advised me in my native language if I did not sign my name to that letter of resignation, I would go to jail, and in my excitement I signed the letter."

In our opinion, it is quite probable that all three versions of the conversation are correct; the employees' versions represent what they "heard" that morning, under all the circumstances. The version by Claimant above is the only evidence presented to support the claim of coercion.

In Award #18476 we said:

"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 . . . or by the confrontation of threatened disciplinary action as an alternative to his resignation."

Since this is not a discharge case where the Carrier must maintain the burden of proof, we look to Petitioner for support for the claim. Except for the unsupported statement of Claimant, we find nothing in the record to persuade us that the resignations were obtained through the use of coercion and duress.

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;

Award Number 19556
Docket Number MW-19707

Page 4

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 shall be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killian
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.