

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20240
Docket Number CL-20277

Joseph Lazar, Referee

(Brotherhood of Railway Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(Employees

PARTIES TO DISPUTE: (

(Pacific Fruit Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7369) that:

(a) The Pacific Fruit Express Company violated the current Clerks' Agreement Rules 13, 17, 23, 24, 33 and 38 thereof, when it arbitrarily and without investigation required under Rule 38, terminated Mr. John P. Moore's employment effective at the close of his shift on December 31, 1971; and,

(b) The Pacific Fruit Express Company shall now be required to allow Mr. John P. Moore eight (8) hours' pay at the pro rata rate of Position E-13 Bill Clerk, \$34.99 per day, for each date January 1 and 3 1972.

OPINION OF BOARD: Claimant occupied regular Position E-13 Bill Clerk, rated \$34.99 per day, workdays Monday through Friday, rest days Saturday and Sunday, with seniority date October 26, 1970. On December 21, 1971, Claimant gave to Carrier his signed writing: "Herewith tender my resignation from the service of the Pacific Fruit Express Company, effective with close of business 3 Jan. 72." Management noted on this writing, "Resignation accepted as of 12/31/71." Claim asserts Carrier violated agreement by terminating Claimant on December 31, 1971, and seeks pro rata rate of Position E-13 for each date January 1 and 3, 1972.

According to the Carrier, the facts in the matter are as follows:

"At the time he presented such proposed resignation, Claimant was notified that since his proposed resignation date of December 31, 1972 was the end of the week, the end of the month, the end of the year and the end of the payroll period, his selection of January 3, 1972 as his termination date was a blatant attempt to 'sharpshoot' the payroll and receive two days' pay for one day's work (Saturday January 1st and January 3, 1972) and consequently his resignation was rather being accepted to be effective with close of business Friday, December 31, 1971.

"4. Claimant accepted this rebuke, acquiesced in the change of resignation date and returned to his duties, but subsequently upon consulting union members requested his resignation be rescinded which request was refused. The Local Chairman of the Organization then requested and was granted a conference with the department head for the purpose of clarifying Carrier's position respecting withdrawal of employee resignations as well as the issue of resignation dates.

"The Department Head met in conference of December 23, 1971 with Claimant and the Organization's Representatives at which time the Carrier's position on resignations and the date of resignation herein at issue were fully discussed and December 31, 1971 remained the date upon which claimant was to resign.

"5. On December 31, 1971 and date the resignation was to become effective, Carrier prepared as requested and presented to claimant a Time Voucher (see Carrier's Exhibit 'B') which covered amount earned as wages as well as vacation earned for the coming year. Claimant readily accepted and cashed this voucher, thereby and together with his active resignation, officially terminating his employment status with the Carrier."

A detailed statement of the facts, given by Claimant, is as follows:

"To whom it may concern,

Against the advice of a number of fellow Pacific Fruit Express employees, ever wishing to be fair, I decided to give the company advance notice of my intent to resign. Approximately two weeks prior to the day I wished to resign, I asked my boss, Mr. Thormahlen, for a resignation slip. I filled it out, filling in Jan. 3, 1972 (4:50PM) as the date I wanted to resign, and took it in to Charlotte Smith, the secretary. Just before lunchtime, Mr. Thormahlen told me that he was told to inform me that my resignation had been accepted as of December 31, 1971.

Since that was before the day I wanted to resign, in effect, I was being fired. After lunch I went in to see Charlotte to find out why I was being fired. She asked me if I wanted to talk to Mr. Schumacher. When I told her that I did, she

"went into Mr. Schumacher's office and told him that I wanted to see him about my resignation. He said that he didn't want to talk to me about it.

So I went up the hall to see Ron Soldavini, (SP) to see what I should do next. He told me that I should go upstairs and talk to Ron Stuart. I explained the situation to Mr. Stuart, he made a phone call, then advised me to go down and withdraw my resignation.

I went downstairs and told Charlotte that I wanted to withdraw my resignation. She said that she didn't think that she could give it back to me, but that she would go find out. She went into Mr. Schumacher's office and told him that I wanted to withdraw my resignation. He said that he had made up his mind and it was final. I was not given my resignation back.

I went back to see Ron Stuart and this time he accompanied me downstairs. Mr. Schumacher was too busy to see us and said that he'd see us at 9:00 the following morning. That afternoon Mr. Stuart had me write my name, job title and seniority date down for him.

The next morning I went up to get Ron Stuart around 8:55 or so in order to go see Mr. Schumacher together. At this time Mr. Stuart told me that he had talked with Mr. Schumacher the previous afternoon. There was no reason given why I wasn't invited to the meeting. Anyhow, Mr. Schumacher made it clear that he would make it as difficult as possible for me to collect (my due). Ron told me to let him know when/if something happened.

Around 4:10 on December 31, 1971, Chuck Carroll, my ass't boss, handed me my employment termination check. That, plus the fact that there was no time card for me for the next pay period, sent me upstairs again to see Mr. Stuart. He was on vacation that day, so I went to see Ron Soldavini. He told me to come to work on Monday, January 3, 1972 and if there was no time card, to go see Ron Stuart.

"On Monday morning I came to work. Having no time card, I went to see Ron Stuart. I waited in the Personnel Office while he talked with Mr. Walsh. Then we both went down to see Mr. Schumacher. Mr. Schumacher said that it was his

"decision to change the date on my resignation and that I, indeed, had not O.K'd the change. He agreed with Mr. Stuart that the only thing we could do would be to put in a claim. I had nothing to thank him for, but Ron thanked him for his time and we left. Ron went back upstairs to Personnel and I left a change of address with Charlotte and then went back to my 'old' office to clean up my desk. As I was cleaning out my personal belongings, Mr. Thormahlen came over to inform me that he was told to tell me to leave.

"I filled out some information for Ron Stuart to help process my claim and then I left. Very bitterly!

"This is not the place to express my feelings about the whole affair in general, nor Mr. Schumacher, in particular. I had full justification for wishing to resign on a certain day. It is unfortunate that Don Schumacher was not interested in discussing it with me.

"To try to take money out of a man's pocket is one thing, but to take it and refuse to discuss it with him, is, to me, the height of arrogance."

* * * * *

The record is clear that the Carrier was not agreeable to a resignation date of January 3, 1972, desired by Claimant, and the record is equally clear that Claimant was not agreeable to a resignation date of December 31, 1971, desired by Carrier. The record, moreover, is clear that there was no question concerning Claimant's intention to leave his employment with the Carrier, and there was no question concerning the Carrier's intention to accept the Claimant's leaving. The sole problem here concerns the date of leaving and not the fact of leaving.

Awards No. 5124 (Carter) and 19796 (Sickles) deal with the question whether there was a "meeting of the minds" to support a determination whether a "resignation" was present. Award No. 13225 (McGovern) similarly finds that "the minds of the parties had never met" to bring about an effective resignation. The present case, however, clearly shows that both parties understood and contemplated the leaving of employment by the Claimant. The present case poses the problem of the legal effect, if any, of the disagreement of record concerning the date of leaving.

Technically, it may be argued that the Carrier's attempted substitution of December 31, 1971 for the proffered date of January 3, 1972 constituted a rejection of the proffered resignation, effectively killing such proffered resignation, and leaving Claimant's employment status unaffected on January 3, 1972, thereby requiring the instant claim to be sustained. Such a result, however, would presuppose the recognition of a right in an employee to quit his employment on the date he alone sets whenever it suits him to do so regardless of the impact on his employer. This Board cannot agree, as in the instant case, where the leaving is entirely voluntary, without coercion or intimidation or any pressure whatsoever, that the employee has the unilateral right to set the date for resignation regardless of reasonable and good faith objection by the Carrier based upon practical business considerations. In the instant case there is absolutely no basis in fact or suspicion of any circumvention or avoidance in any manner of the fundamental security safeguards --such as the disciplinary rules --of the collective bargaining agreement. In the particular circumstances of the case in this record, we find that the Agreement has not been violated.

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 has not been violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary


Dated at Chicago, Illinois, this 17th day of May 1974.

LABOR MEMBER'S DISSENT TO AWARD 20240,
DOCKET CL-20277 (Referee Lazar)

The majority, in Award 20240, states:

"The record is clear that the Carrier was not agreeable to a resignation date of January 3, 1972, desired by Claimant, and the record is equally clear that Claimant was not agreeable to a resignation date of December 31, 1971, desired by Carrier."***

This holding is absolutely correct. Thus, it is clear that there was not a "meeting of the minds" on the date of resignation (Award 19796, Sickles). Nonetheless, in the absence of a meeting of the minds as to the effective date of resignation, the Carrier arbitrarily terminated Claimant on the date they wanted his employment to end. This termination was a constructive dismissal without benefit of a hearing and investigation as required by the Parties' Agreement. The conclusion of the majority upholding this result is palpably in error and requires dissent.


J. C. Fletcher, Labor Member
5-23-74