

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21888  
Docket Number MW-22010

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Missouri-Kansas-Texas Railroad Company

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

(1) The dismissal of Mr. Paul Marks by letter dated June 18, 1976 and subsequently reaffirmed by letter dated July 7, 1976 which followed a hearing held on July 1, 1976 was arbitrary, capricious, unreasonable and without just and sufficient cause (System File 400-25/2579-23).

(2) Claimant Marks shall be restored to service with vacation and all other rights unimpaired and shall be paid for all time lost.

OPINION OF BOARD: The Claimant, Paul Marks, was employed August 1, 1975. He was discharged June 18, 1976, for engaging in activity detrimental to the interests of his employer. He was specifically accused of soliciting and encouraging injured employees to employ a certain attorney to represent them against the Carrier.

It seems to be the established law that the Union and the individual members thereof may properly investigate injuries sustained by a member. The individual may even advise the injured workman of the advisability of obtaining legal advice. The Brotherhood may also suggest the names of capable counsel and suggest that the injured workman might want to contract with one of them individually for professional services. However, it is quite clear that the relationship of the attorney and client must be of a personal nature and must be established on an individual basis.

Award 20706 discussed the right of free speech and concluded in regard to the Claimant in that case that, "He acted like an ambulance chaser, not like a compassionate fellow worker".

The dividing line between protected and objectionable activity appears to be where the giving of advice leaves off and active solicitation begins.

In this case, the Union argues that all the Claimant did was give his fellow employees the business card of an attorney and suggest to the employee that he contact the attorney and advise him that the

Claimant had recommended that he seek the counsel and advice of the attorney.

The Carrier urges that the acts of the Claimant constituted solicitation and that he repeatedly approached and harassed his fellow employees in an attempt to direct them to a certain attorney.

We have reviewed the entire testimony and are of the opinion that in the presentation to the Board, the Union has understated the case by about the same amount as the Carrier has overstated the same.

We find that the Claimant was somewhat over zealous in his advice to his fellow employees. His actions go beyond just giving advice, but they fall short of outright solicitation.

We find that the Claimant should be restored to his prior position with the Carrier, but that he should not receive compensation for time lost.

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;

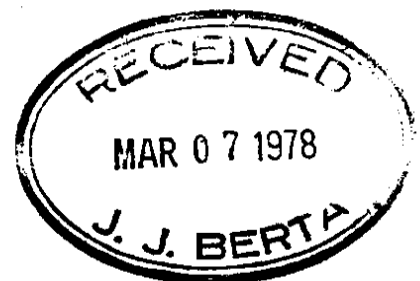
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That the Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained as provided herein.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1978.