

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26277
Docket Number SG-26373

James A. Johnson, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

On behalf of Mr. M. E. Polnow for reinstatement of his seniority rights and pay as a result of his loss of work opportunity effective February 28, 1984, when he was caused to sign a resignation under duress and after considerable harassment by his supervisor. (Carrier file: F-1107)"

OPINION OF BOARD: On February 28, 1984, a confrontation occurred between Carrier's General Supervisor Burton and Signalman Polnow, the Claimant in this case. The Submissions and oral arguments of the parties before this Board indicate that each man involved acted with great propriety, while the other acted improperly. The record does not comport with either position.

From a careful review of the record, the Board is able to deduce the following chain of events. As Supervisor Burton approached the gang at approximately 8:30 A.M., he was greeted by the Claimant who called out, asking if his transfer had come through. Apparently, some tension already existed between the Claimant and his Supervisor, and the Supervisor instructed Claimant to get into the Company car. Before complying with this request, Claimant called out to a Burlington Northern employee who was passing by, and asked whether the BN was accepting applications for employment. At this point, the Supervisor became irritated, and told Claimant to get into the car, and he would see to it that he would get a transfer "right off the railroad."

The Supervisor and the Claimant drove to the depot, where they were joined by another Carrier official, and the three proceeded to the local Police Station, where Claimant was given a breathalyzer test. The test failed to show a sufficient alcohol level to permit a formal investigation. Claimant and the Supervisor returned to the depot where they discussed their differences, and the Supervisor suggested that the Claimant resign from the service. It is clear from all descriptions that both parties were angry during this exchange, and it is equally clear that the exchange resulted in the Claimant's resignation from service.

Claimant attempted to recant his resignation nearly two weeks later and, when the Carrier did not permit him to do so, this Claim was filed. The Organization asserts that the Claimant was harassed into resigning and, therefore, the resignation would be invalidated. The Carrier asserts that there is no evidence that the resignation was made under duress, and that it should be considered valid.

The Board does not believe that either party acted in a manner beyond reproach, and it is clear that the situation deteriorated rapidly. However, there is no evidence that the Claimant was intimidated or coerced into resigning. It is true that he was taken for a breathalyzer test, but the record shows that Claimant had traces of alcohol on his breath. While the amount was not deemed sufficient by the Carrier to subject Claimant to disciplinary action, it probably was sufficient to be smelled on Claimant's breath. Therefore, it was not "harassment" to require him to submit to the test.

Further, while both Claimant and the Supervisor were angry, that alone is not sufficient to claim that he signed the resignation "under duress." It is clear that Claimant contributed to his Supervisor's anger, and he cannot then use that anger to excuse his actions.

Indeed, it would have been better if a Union representative had been present at the interview; however, there is no showing that the Claimant requested a representative. Neither does Claimant, or the Organization, point to any specific threat which allegedly led to the forced resignation. It may be that Claimant and the Supervisor were angry, and Claimant may have regretted signing the resignation in anger; but that, alone, does not invalidate the resignation.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.