NATIONAL RAILROAD ADJUSTMENT BOARD
Form 1 THIRD DIVISION Award No. 29968
Docket No. SG-30042
93-3-91-3-585

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago Belt Railway Company:

Claim on behalf of T.D. Humay and D.P. Borsilli, for reinstatement to service with all time and benefits lost beginning August 3, 1990, and continuing until this dispute is settled, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 52, when it suspended them from service and later dismissed them, in that it did not comply with the rule and failed to ascertain their guilt." BRS Case No. 8423.BELT.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimants in this case were regularly assigned as a Signal Foreman and a Signal Truck Driver. In June and July, 1990, they were involved in the removal and sale of some 2,100 pounds of scrap cable, the proceeds from which were converted to their own use. On August 3, 1990, the Claimants were removed from service pending an Investigation into charges which were set forth in a letter dated August 3, 1990, which instructed the Claimants to appear for a hearing scheduled to be held on August 8, 1990. At the request of the Organization, the hearing was postponed to August 15, 1990, at which time both Claimants were present, represented and testified on their own behalf.

Following completion of the Investigation, the Claimants were notified by separate letters dated August 20, 1990, that they were dismissed from Carrier's service. Subsequently, by letter dated September 10, 1990, Claimant Borsilli agreed to a reinstatement to service on a leniency basis with the condition that there would be no claim for or compensation for time lost. By letter dated September 21, 1990, a leniency reinstatement offer with a condition of no pay for time lost and disqualification as Foreman was made to Claimant Humay. This reinstatement offer was repeated by letter dated September 25, 1990. Claimant Humay rejected the offers of reinstatement.

On September 26, 1990, Claimant Borsilli submitted a letter in which he voluntarily resigned from the service of the Carrier.

On October 8, 1990, Claimant Humay submitted a letter in which he voluntarily resigned from the service of the Carrier.

In spite of these voluntary resignations by both Claimants, the parties continued to progress the appeals through numerous stages with repeated exchanges of correspondence through all levels of handling on the property. The Organization followed this on-property handling with a listing to this Board dated October 18, 1991, asking this Board to reinstate the two Claimants to service and pay them for all time lost.

The Organization has also argued that Carrier violated the provisions of the Agreement when it removed the Claimants from service prior to the holding of an Investigation and that, in any event, the Carrier had failed to meet its burden of proof requirement or, in the alternative, imposed discipline which was excessively harsh and unwarranted.

The Carrier argued that the language of Rule 52(a) does not require that an Investigation must be held before an employee may be withheld from service and that the language of Rule 52(f) supports this position.

Rule 52 - INVESTIGATIONS, HEARINGS AND DISCIPLINE reads, in pertinent part, as follows:

> "(a) An employee will not be disciplined or held out of service without a fair and impartial investigation and hearing, at which investigation and hearing he may be assisted by one or more duly accredited representatives. He will be advised in writing at least forty-eight (48) hours prior to such hearing of the charge or charges which have been made

> against him. At such hearing he shall have the right to call witnesses (without expense to the Company) to testify in his behalf and he and his representative shall be permitted to question witnesses insofar as the interests of the accused employee are concerned.
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> (f) If the charge against the employee is not sustained, it will be stricken from the record. If by reason of such unsustained charge the employee has been removed from the position held, reinstatement will be made and he will be compensated for wage loss, if any, suffered by him."

There is no provision in this Rule 52 which addresses removal from service for so-called major offenses.

Carrier says that the clear and unambiguous language of Rule 52(a) "does not say that an investigation must be held before an employee can be pulled out of service, but rather that an investigation must be conducted with respect to the charge(s) made against such employee before the employee can be kept out of service." It goes on to argue that the language of paragraph (f) of Rule 52 "supports Carrier's interpretation in this regard." It alleges that the Organization's contention is "both illogical and inconsistent with the parties' intent when Rule 52 was originally drafted."

From the Board's reading of Rule 52(a) and (f), the Carrier is entirely wrong in its interpretation. The intent of this Rule is clearly set out in the language of the Rule. Whether or not it is illogical is left to those who drafted and agreed to the language. It says, in no uncertain terms, that the employee will not be held out of service without a hearing. Carrier's contention relative to the "intent" of the parties is meaningless without probative evidence that the intent differs from the clear language of the Rule. If this situation is contrary to Carrier's liking, then a change in the Rule language is required. This Board cannot grant such relief.

As for Carrier's argument relative to paragraph (f) of Rule 52 being supportive of its position, that too is wrong. Paragraph (f) has application only in a situation in which the charges against the employee are not sustained. Such is not the case in this instance.

As for the Organization's arguments relative to required burden of proof and severity of discipline, this Board concludes that those contentions are rendered meaningless first by Claimant Borsilli's voluntary acceptance of leniency and his waiver of any claim for time lost, and, second by both Claimants voluntary resignations from Carrier's service. It is well established that a voluntary resignation terminates all rights under a negotiated contract as of the date of the resignation. The Claimant's voluntary act has effectively removed this Board's authority to order reinstatement even if we were so inclined which, on the basis of this record, we are not.

The single area which this Board can adjust in this case concerns Claimant Humay and Carrier's violation of Rule 52(a) which occurred before his voluntary resignation. It is this Board's ruling, therefore, that Claimant Humay must be compensated for the period from August 3, 1990, to August 8, 1990, the date on which the Investigation was originally scheduled. Carrier clearly is not responsible for the Organization's requested delay in holding the Investigation.

All other aspects of this claim are denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.