

PUBLIC LAW BOARD NUMBER 3530

Award Number: 27

Case Number: 27

PARTIES TO DISPUTE

NORFOLK AND WESTERN RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM

Claim of J.E. Pack for reinstatement, pay for all time lost, and seniority and vacation rights unimpaired.

FINDINGS

The Claimant was a Laborer on the T-5 Tie Gang in the Fort Gay, West Virginia area. During the month of May, 1983, the Claimant was having difficulties in performing his duties in a timely manner. On May 25, the Claimant was pulling spikes ahead of the tie gang. He was slow in performing this job.

Mr. William Smith, the Foreman requested Mr. Merilli, Assistant Roadmaster, and Mr. S.G. Smith, Roadmaster, to speak to the Claimant. During the course of the conversation, the Claimant expressed an interest in obtaining a release from the tie gang, and working for a different department of the

Railroad.

Mr. Merilli and Mr. S.G. Smith informed the Claimant that he could not be released unless he was displaced by a senior employee, was dismissed through normal disciplinary procedures, or voluntarily resigned. During the course of this conversation, the Claimant requested that his union representative be present.

At 10:15 AM on that morning, the Claimant signed the following resignation statement:

I, J.E. Park, 232-90-5433 hereby relinquishes all my rights and seniority as Extra Force Laborer and any other rights with the Norfolk and Western Railway Company, effective this date, May 25, 1983.

The statement was witnessed by Mr. Merilli, and Mr. Scott, a Union Representative. But, Mr. Scott in a statement written on June 27, 1983, indicated that he was not allowed to speak with the Claimant before the signing of the statement.

A statement written by Mr. Copley revealed that Mr. William Smith, Foreman, had approached members of the tie gang, asking them to sign a petition against the Claimant. Another statement, written by Mr. Payton revealed that Mr. William Smith had vowed "to get rid of" Mr. Pack.

On May 31, the Organization's General Chairman, Mr. Pugh, requested that an investigation be held. This request cited Rule 33 of the Agreement. On June 7, the request for the investigation was declined.

On June 30, the Organization filed this Claim, requesting reinstatement for the Claimant. Initially, it was denied by Mr. Yost, Regional Engineer. The claim was appealed and then denied by Mr. Steele, Assistant Vice President - Labor Relations on September 5.

The issues in this dispute are whether the Claimant was entitled to an investigation, and whether he is entitled to reinstatement.

The position of the Organization is that the Claimant signed the resignation due to coercion. The Organization also argues that the Claimant was denied due process because he did not receive an investigation when he requested one.

The position of the Carrier is that the Claimant voluntarily resigned on May 25, and since resignation is not a dismissal or disciplinary action, he was not entitled to an investigation. The Carrier also argues that the Claim should have been filed with the Division Engineer first, rather than the Regional Engineer, and that therefore, the claim was defective on procedural grounds.

Rule 33(f) of the Agreement states:

An employee who considers himself otherwise unjustly treated shall have the same right of hearing and appeal as provided for in this Rule 33, if written request is made to his supervisor within ten (10) calendar days of complaint.

The Claimant's request for an investigation was timely. It was written six days after the incident, and was received by the Carrier two days later. This clearly falls within the ten-day time limit under Rule 33(f). The Claimant's request for an investigation was reasonable. There was reason to believe that he was "unjustly treated", in that his resignation may have been coerced. It is the opinion of this Board that the Claimant was entitled to an investigation under Rule 33.

In this particular situation, there are several factors which indicated that the resignation may have been coerced. Mr. William Smith had vowed to have the Claimant removed from the T-5 Tie Gang, and circulated a petition in an effort to do so. During his conversation with Mr. Merilli and Mr. S.G. Smith, the Claimant was not allowed to speak with his Union Representative, Mr. Scott, prior to signing the resignation. In light of these facts, the Board concludes that although there was evidence that the Claimant did resign, it is not clear whether this resignation was voluntary or not.

Since an investigation to determine whether the resignation was voluntary or coerced was not held, it is the opinion of this Board that the Claimant should be reinstated to his position with the Carrier.

AWARD

The Claimant shall be reinstated to his position as an Extra Force Laborer with seniority unimpaired, but with no pay for time lost.

Nicholas Kumar
Neutral Member

J. A. Abbotto Jr.
Carrier Member

Bruce L. Hall
Organization Member

DATE:

1/13/86