

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 3689

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

AWARD NO. 6

Case No. 6

STATEMENT OF CLAIM

1. Claim of the System Committee of the Brotherhood that the Carrier violated the provisions of the current Agreement between the Brotherhood of Maintenance of Way Employees and the Union Pacific Railroad Company when on June 19, 1984 it coerced Mr. Henry Foster to relinquish his seniority and resign from the Union Pacific Railroad Company.

2. That the Carrier will now be required to reinstate Mr. Foster to his former position with seniority and all rights restored unimpaired and compensation for all wage loss suffered.

FINDINGS

The dispute herein centers on the circumstances of a letter of resignation signed by the Claimant on June 19, 1984. Under ordinary circumstances, resignation by an employee obviously terminates any right to reclaim a position with the employer. The circumstances involved here, however, are far from ordinary.

In a statement prepared for him by an interpreter on August 14, 1984, the Claimant stated the following:

I went to the UP office on the evening of June 19, 1984 and was told I was fired. I was also told I should sign a paper. I thought I had no choice, so I signed. There were some other people present in the office. . . .

On July 9, 1984 I went back to Evanston, Wyoming to try to get my job back. I was told I could not have a job.

I can speak a little English, but I am not able to read English. My native language is Navajo.

The Carrier's version is quite different, although it presents two varying accounts of what occurred. A statement from a Clerk who was present describes what happened as follows:

On 19 June 84, at Granger Wyo. Mr. Foster drove into camp that morning, ran into and stuck his pick up truck in the ditch, walked into the office car and announced that he wanted to quit and go home. A letter was typed up and Mr. Hamilton explained the circumstances of resigning. No coercion or force of any kind was applied towards Mr. Foster.

On the other hand the reply to the Organization's claim by the Carrier's Division Engineer gives a different version. The Division Engineer's letter of July 31, 1984 concerns both the Claimant herein and another Claimant, Benson Charley, and stated in part as follows:

My investigation into this matter reveals both claimants knew very well what they were signing.

On June 1, 1984 in the Roadmaster's office in Rawlins, Wyoming, with witnesses present, Mr. Charley was advised of the circumstances. It was explained to him by his supervisor Randy Hamilton, he had two choices. The first was to be held out of service pending a hearing and investigation on an alleged Rule G violation (specifically, intoxication) and the second was to sign a letter of resignation by which his employment relationship and all seniority rights would be forfeited. Mr. Charley was also advised that if he chose to be investigated, he would be so advised in writing but during the interim could not expect to reside in the outfit cars since he would be withheld from service pending an investigation. Mr. Charley stated he understood and subsequently chose to resign. He was not tricked into anything nor was he "told" to resign. He was given a choice. Likewise, the same procedure was followed with Mr. Foster on June 19, 1984, but this time the conversations took place in the Steel Gang office car and again, with witnesses present.

Any ambiguity about the "same procedure" referred to in the final sentence, above, is clarified in the Carrier's submission in reference to Foster, stating that Foster was offered "two choices" by his supervisor -- "to be held out of service pending a hearing and investigation on an alleged Rule G violation" or "to sign a letter of resignation". The Carrier argues that the Claimant voluntarily took the latter course.

It is the Organization's position that the resignation was "coerced"; that the Claimant had a faulty knowledge of

English; and that, if there were a question of alleged Rule G violation, an investigation should have been conducted in proper order under the discipline rule.

The resignation itself was of an obviously makeshift nature and read in full as follows:

19 June 84
Granger Wyo
XG 2806

I, Henry Foster (525 62 9187) do hereby, of my own free will, resing [sic] my position as XXXXXXXXXXXXX PTMO, on System Steel Gang 2806, Union Pacific Railroad, as of thos [sic] date 19 June 84.

[s] H. Foster
Signature

[s] C.D. Bigelow
Witness

It may well be, as the Carrier suggests, that the Claimant was simply offered a choice of resignation in lieu of facing a disciplinary investigative hearing. The circumstances, however, are troublesome to the Board. First, there is no indication in the record of the nature of the alleged Rule G violation, except that it referred to "intoxication". What were the circumstances? On or subject to duty or not? On Carrier property or not? Was the Claimant so advised? There is further the question of

the Claimant's command of English and whether he fully understood the inaccurately typed and impromptu resignation notice. On top of this is the version presented by the Clerk who allegedly witnessed the incident. This statement implies nothing about a "choice" or a possible Rule G violation but suggests that there was only a unilateral resignation. Which is the correct version?

Since there was no investigative hearing (and none called for in view of the absence of a formal allegation of rule violation), the circumstances remain clouded. It would have been a simpler procedure to charge the employee formally with rule violation. At this point, knowing the charges against him, the Claimant could have made his own determination whether to stand trial or to quit.

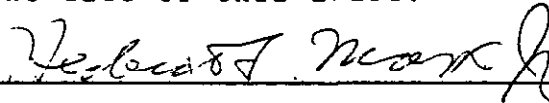
Awards cited by the Carrier in cases of allegedly coerced resignations do not appear to include the particular circumstances applicable here.

The Board finds no convincing proof that the Claimant was deliberately coerced. However, since the Carrier presents no single clear version of what occurred, the Claimant's statement must be given some credence (i.e., that he was "fired" and then resigned). Upon receiving advice of others, he

apparently wished to disclaim the "resignation". Under the circumstances, he is entitled to do so. As to back pay, however, the Board finds no basis for this, since in fact (even under misapprehension) he did sign the makeshift resignation.

A W A R D

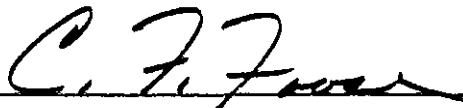
Claim sustained to the extent that the Claimant shall be offered reinstatement to his former position with seniority unimpaired but without back pay or retroactive benefits. The Carrier is directed to put this award into effect within 30 days of the date of this award.



HERBERT L. MARX, JR., Chairman and Neutral Member



E.R. MYERS, Carrier Member



C.F. FOOSE, Employee Member

New York, N.Y.

DATED:

December 17, 1985