

Public Law Board No. 3794

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Seaboard System Railroad

STATEMENT
OF
CLAIM:

1. The termination of Trackman C. R. Carlisle was without just and sufficient cause.
2. Claimant shall be restored to service with all rights unimpaired and compensated for all wage loss.

FINDINGS:

On September 25, 1983, claimant was arrested and charged with grand theft of railroad ties from an abandonment project. He was notified by Carrier's letter of October 6, 1983, that as a result of these developments, he was being charged by Carrier with dishonesty and making false statements and that

"You will be granted a hearing to determine the facts and place responsibility, if any, in connection with this charge. Division Engineer W. A. Freeman will advise time and date hearing will be held."

By a letter of the same date, October 6, 1983,

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Mr. Freeman notified claimant that

"After your case has been decided in civil court, we will advise you at that time of time and date hearing is to be held."

The Civil Court charges were "disposed of" on October 11, 1984 and claimant was not found guilty of them. However, when on October 22, 1984, the General Chairman requested Carrier to schedule a hearing on its charges, Mr. Freeman replied that claimant was no longer an employee since he had resigned on April 11, 1984.

A hearing accordingly was not held in this matter and there is no evidence to substantiate charges levelled by Carrier against claimant.

The alleged resignation was never reduced to writing or signed and was not even confirmed by Carrier until some five months after it was allegedly tendered and accepted. It is based on a statement made by Roadmaster McLellan that while waiting to see the State Attorney at the latter's office in response to a subpoena to give a deposition in the case against claimant, he met claimant in the lobby and claimant informed him that he was resigning in connection with "some kind of deal" his lawyer was working out with Seaboard to drop charges. There is also a statement in the record from a Company secretary that claimant had told her over the telephone on April 11, 1984 that "he was resigning," that she concluded from that call that he had resigned and that she never again considered calling him for work "assuming" he had terminated his services with the Company.

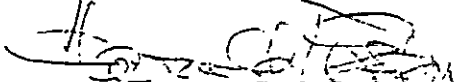
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Neither the roadmaster's nor secretary's statement is persuasive proof that such an important act as resignation from employment took place. The statement to the roadmaster was made in an informal casual discussion and refers to a settlement arrangement that has not been established by evidence. The secretary's assumption is not convincing proof; she was not present when claimant allegedly spoke with the roadmaster and was not the proper person to receive a resignation. An employee's loss of livelihood cannot validly be based on such sketchy and unsatisfactory statements, particularly in the face of claimant's denials and any timely confirmation of resignation. The matter could have been clarified perhaps by a hearing of the issue, as Petitioner indicates.

We will direct Carrier to reinstate claimant with seniority rights unimpaired. No back pay will be awarded since to some extent the situation was confused by claimant's failure to report for work. While we can appreciate his reluctance to communicate with Carrier while he was under serious charges, he did give Carrier the impression that he had resigned when he did not call in for work for several months after April 11, 1984. He had not been withheld from service.

AWARD: Claimant reinstated with seniority rights unimpaired but without back pay. To be effective within 30 days.

Adopted at Jacksonville, Florida, Dec. 19, 1985.


Harold M. Weston, Chairman


Carrier Member


Employee Member