

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 3689

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

AWARD NO. 7

Case No. 7

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 1, 1984 it coerced Mr. Benson Charley to relinquish his seniority and resign from the service of the Union Pacific Railroad Company.

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

FINDINGS

The circumstances in this claim are somewhat similar to that reviewed in Award No. 6, which is incorporated herein by reference.

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Here, the Claimant signed a letter of resignation on June 1, 1984, which read as follows:

1 June 84
Rawlins wyo
XG 2806

I Benson Charley do hereby resign by position as extra gang laboer on extra gang 2807 as of this date 1 June 84., Union Pacific Railroad.

/s/ ^X Benson Charley
Signature

/s/ C. P. Bigelow
Witness

It is difficult to determine whether the "x" stands for the Claimant's signature (with someone else writing his name), or whether he actually signed his name.

Here, too, there is a statement from the Clerk, which reads in pertinent part as follows:

On 1 June 84, in the Rawlins Roadmaster's office, Mr. Charley signed a letter of resignation that I witnessed. The circumstances of resigning was carefully explained by Mr. R. N. Hamilton. Mr. Charley was not coerced, threatened or forced to sign the letter of resignation. Mr. Charley may have been drinking the night before, but he was sober when he signed the letter at approximately 11 AM that morning.

The version of what happened is described in the Division Engineer's letter of July 31, 1984, which states 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. . . .

The Claimant's version of what occurred is contained in a letter he wrote (or had written for him) to his General Chairman on June 26, 1984, in pertinent part as follows:

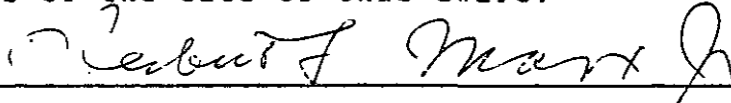
I was working for K Gang 2806 in Laramie, Wyo. On June 1st 1984 my foreman pick me up and told me that I was bump off, without telling me or explaining he just told me to sign a paper, which I found out was a resign paper. I found out about this when I went to the Union Pacific R/R office here in Gallup. I wonder why I was never told what I was signing maybe becuz I can't read real well or not well educated.

I really want to go back to work with the Union Pacific R/R. I think I deserved to get rehired, for the signing of the paper was never explained to me. . . .

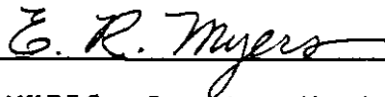
For the reasons expressed in Award No. 6, the Board reaches the same conclusion. Doubt as to the actual circumstances must be resolved, in this instance, in favor of the Claimant.

A W A R D

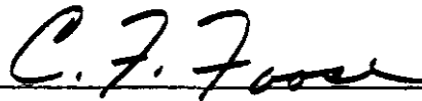
Claim sustained to the extent that the Claimant shall be offered reinstatement to his former position with seniority unimpaired but without back pay or retroactive benefits. The Carrier is directed to put this award into effect within 30 days of the date of this award.



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