

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 12

Case No. 12

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current agreement when on April 13, 1987, it allowed Roadmaster R. D. Honeycutt to coerce Mr. J. M. Patrick into resigning from his position with the Burlington Northern Railroad.

2. The Carrier will now be required to reinstate Mr. Patrick with seniority and all other rights restored unimpaired with compensation for all wage loss suffered.

F I N D I N G S

It is the Carrier's contention that the Claimant voluntarily quit his employment on April 13, 1987, following an argument with the Roadmaster, his direct supervisor, concerning a change in assignment for the remainder of the shift. The Organization takes the position that the Claimant was "coerced" into submitting a resignation and that he was mentally disoriented based on his

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EMPLOYEE RELATIONS

misunderstanding as to medication prescribed to him by his physician.

Two days following the incident, the Roadmaster prepared the following written report:

On April 13, 1987, about 2:45 p.m., I was called to the back because there was someone hurt. I went back there and Mr. C. Bussey had hurt his thumb. Mr. Bussey was working as operator helper on spike driver. I only had 26 men working so I told the operator of the spike driver to get with the other spike driver operator and let the one machine sit. The feeders on both spike drivers were told to help the plate throwers and shovelers which were ahead of the rail lifter because they were short handed. I called Tim Lyons to take the man to the doctor. A few minutes later I saw Mr. Patrick talking to the feeder on the spike driver. I told him to go help the plate throwers. He said, I'm not going to. I said yes, you are. He said, my job is feeding spikes. I said, your machine is not going to be working. It'll just be sitting there so I need you to help those guys throwing plates. He said, if you can't give me a permanent job feeding spikes, I don't want a job on this gang. I should have a permanent job on a section gang. I'm not able to do this kind of work. I've been institutionalized and I can't do it. I asked him if he had a doctor's release to come back to work. He said, yes. I got one to come back to work on the 6th of April but I got that done myself. I wasn't ready to come to work. I told him that if he had a doctor's release he must be capable of working. He said, no, my doctor's crazy. He said, if I'm gonna have to do that kind of work, I'll just quit the railroad. I said, so you're quitting? He said, yes, if that's what it takes, so we went to my pickup and I wrote out the resignation and asked him if he would sign it and he said yes. He took the paper and then decided not to and wadded it up and wanted me to take him to his car. And I said, all I want you to do is throw plates which isn't any harder than what you were doing and he said, I can't do that. I'm under doctor's care and on medication

and you've got my nerves all messed up. He said, you and Tim Lyons are gonna get your ass kicked. Do you want yours kicked? I'll do it right now. I said, all I want you to do is throw plates. I'm too short handed to just let you sit on your machine. You have to either throw plates, quit like you said or get fired for insubordination. He said, okay, I'll sign it if you'll take me to my car. I said, if you sign it, I'll take you to your car so he signed the paper and said, this paper's worthless. When you get a letter from my doctor you'll see how worthless it is and I took him to his car. That was it.

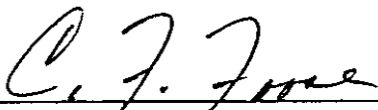
There was no contention that this statement fails to reflect accurately what occurred between the Roadmaster and the Claimant. From the statement, it is clear that the Claimant initiated the threat to quit "if I'm gonna have to do that kind of work". He did not indicate that he was incapable of performing the new work assignment. He was given the opportunity, after threatening to quit, to comply with the Roadmaster's instructions as to the work assignment. There is, therefore, no probative evidence of coercion, and the Carrier exercised reasonable judgment in concluding that the Claimant had voluntarily terminated his employment status.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Referee



C. F. Foose, Employee Member



R.J. Schneider, Carrier Member

DATED:
NEW YORK, NY