

NATL. ASSOCIATION

PUBLIC LAW BOARD NO. 736

MAY 20 1972

Award No. 1

UNITED TRANSPORTATION UNION - (T)

vs.

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of W. R. Morrison for reinstatement with full compensation for all time lost, with vacation privileges and seniority restored."

FINDINGS:

The facts in this dispute are complex and lengthy. We set forth only those salient facts necessary for a resolution to this claim.

Claimant, immediately prior to his dismissal, was employed by Carrier as a Yard Foreman. He was also General Chairman of the Organization.

As the result of an incident near the Budweiser plant on January 18, 1963, carrier notified Claimant and two other employees that charges were pending by letter dated January 21, 1963, as follows:

"Messrs. W. R. Morrison, 10240 South Sawyer Avenue,
Evergreen Park 42, Illinois
W. R. Schmidt, 4956 North Milwaukee Avenue,
Chicago 41, Illinois
J. McFarland, 10740 Springfield Avenue,
Chicago, Illinois

Please arrange to attend investigation
to be held at the Harvest Room, Stock Yard Inn,

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42nd and Halsted Streets, Chicago, Illinois, at 9:00 a.m., Thursday, January 24, 1963.

This investigation is being held to determine your responsibility, if any, in connection with an incident which occurred at approximately 6:35 p.m., Friday, January 18, 1963, in the vicinity of the Budweiser plant, 48th and California Avenue, Chicago, Illinois, at which approximate time you reportedly entered Railroad property and interfered with the operation of engine 9802, the 2:30 p.m. Kenwood Assignment, threatening Yard Foreman Brownfield and crew with abusive and violent language in an effort to induce said crew to stop work and tie up their engine.

You may have witnesses and representation present.

(signed) P.M. White
P.M. White, Trainmaster"

After a lengthy and involved hearing, Carrier dismissed Claimant and the two other employees from service.

Also dismissed in other proceedings were five other employees charged with contributing to the general disruption of Carrier's activities on the same day.

Subsequent attempts to reinstate the dismissed employees resulted in an agreement on August 22, 1963 between Carrier, the Organization, and the dismissed employees. That agreement is set forth in full:

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"AGREEMENT AND RELEASE

MEMORANDUM OF UNDERSTANDING between The Chicago River and Indiana Railroad Company and its employees collectively represented by the Brotherhood of Railroad Trainmen and the following named individuals with respect to the reinstatement on a leniency basis, of employees as outlined below:

IT IS AGREED:

FIRST - In full, final and complete disposition of the requests by the Brotherhood of Railroad Trainmen for reinstatement on a leniency basis, in connection with discipline cases progressed by the Brotherhood of Railroad Trainmen by letters dated February 8, 1963 (2), February 15, 1963, February 17, 1963, February 18, 1963, March 1, 1963, March 3, 1963 (2), March 13, 1963, March 16, 1963, March 20, 1963, and April 9, 1963, of the following persons:

Harold W. Corbett	Joseph E. Byrnes
Stanley J. Kopack	Theodore R. Bowen
Walter H. Schmidt	John E. McFarland
William R. Morrison	Bernard J. Nels

The Chicago River and Indiana Railroad will reconsider the granting of leniency and also reconsider the reinstatement of the aforementioned individuals, subject to their passing the necessary physical examinations. Insofar as the request for extension of leniency and reinstatement in the case of Mr. William R. Morrison, that request will be held in abeyance and not again considered until after January 1, 1964.

SECOND - The aforementioned persons individually and the Brotherhood of Railroad Trainmen collectively do hereby forever release and discharge the said The Chicago River and Indiana Railroad Company from any and all claims, demands, and causes of action of whatsoever kind or nature arising by reason of the Railway Labor Act, other Federal, State, or local statutes, ordinances or of common

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law or other ways, relating to, directly or indirectly, the dismissal from the service of the railroad of the said named persons as a result of certain incidents occurring on or about January 18, 1963, at Chicago, Illinois.

Signed at Hammond, Indiana, this 22nd day of August, 1963.

FOR THE BROTHERHOOD OF
RAILROAD TRAINMEN:

FOR THE CHICAGO RIVER
AND INDIANA RAILROAD CO.

(Signed) William R. Morrison
General Chairman

(Signed) R. B. Hasselman
General Manager

The individuals executing this agreement hereby acknowledge and understand that this agreement contains a GENERAL RELEASE OF all wage claims.

(Signed) Harold M. Corbett
Harold W. Corbett

(Signed) Joseph E. Byrnes
Joseph E. Byrnes

(Signed) Stanley J. Kopack
Stanley J. Kopack

(Signed) Theodore R. Bowen
Theodore R. Bowen

(Signed) Walter H. Schmidt
Walter H. Schmidt

(Signed) John E. McFarland
John E. McFarland

(Signed) William R. Morrison
William R. Morrison"

All of the dismissed employes, except Claimant, were reinstated on a leniency basis without pay for time lost on September 1, 1963.

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Soon after January 1, 1964, the Organization requested reinstatement of Claimant on the basis of leniency. On March 6, 1964, Carrier replied "that there is no basis or justification for extending leniency in this particular case and, therefore, the request for reinstatement is again denied."

Following Carrier's denial, Claimant, as General Chairman, filed a Submission with the Board's First Division; and Carrier was requested to file an answer.

On October 25, 1966 the Board, through Referee Dolnick, in Award No. 21000 dismissed the claim. The pertinent portions of the Board's Findings are set forth:

"Respondent carrier advances arguments, challenging our jurisdiction, because of alleged failures on the part of Petitioner to progress the dispute in the usual manner as required by the Railway Labor Act.

Petitioner makes some references to these matters in his reply to the answer of respondent and while he does not agree therewith, neither does he controvert nor disprove them.

We have carefully reviewed the record in this connection, for if petitioner has not complied with the procedural requirements of the Act, we lack authority to decide it on the merits. The evidence herein shows that a request for reinstatement of petitioner on a leniency basis, consistent with the August 22, 1963, Memorandum Agreement, was denied by respondent on March 6, 1964, and under date of April 30, 1964, it received a notice 'requesting Carrier to file answer to the Organization's submission to the First Division, in the instant dispute.' From this state of the record, it is established that petitioner's only 'handling' of the claim now before us was preparation of his

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submission to the First Division.

Petitioner did file a 73 page position but virtually all of this went to issues finally and conclusively settled by negotiation between these same parties - petitioner himself, (as representative of the organization and again as individual claimant) and the General Manager of the carrier, as is clearly established by the August 22, 1963, Memorandum Agreement.

As to the instant claim, we find that it was never properly initiated and progressed on the property as required by the Act, and must be dismissed for that reason. See our recent Award 20 907, which is directly in point and consistent with a long line of similar awards.

AWARD: Claim dismissed. NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION"

On November 4, 1966, the Organization, under the signature of Claimant as General Chairman, began its appeal process at the various levels on the property, requesting that Claimant be reinstated on the seniority roster and for compensation for all time lost from January 2, 1964. At each level the request was denied by Carrier.

Summarized, Carrier's position may be stated as follows:

1. The claim in dispute has been previously determined by Award No. 21000, and the matter must be considered "res judicata." The present effort on the part of the Organization is re-filing of a previously disposed of claim.

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2. The "Agreement and Release" of August 22, 1963, was signed by Claimant as an individual employe and as General Chairman of the Organization, and is final and binding on Claimant and the Organization. Carrier further asserts that the agreement was made in good faith, and was entered into by Claimant with full knowledge that it was a release of all claims and demands.

3. The present claim is different from that handled on the property in that on the property the claim was limited to compensation for time lost from January 2, 1964.^{1/} As such, Carrier contends, it is not a claim that can properly be considered before this Board.

4. Carrier further asserts that Claimant, by virtue of the August 22, 1963 Agreement and Release, abandoned his claim for time lost compensation and is limited to the leniency aspect set forth in that Agreement. Since leniency, as has been held by the Board, is a matter solely within Carrier's discretion and cannot be considered by the Board, Claimant's claim must fail.

5. The investigation and hearing were proper, and there

^{1/} The Claim now before the Board reads:

"Claim of W.R. Morrison for reinstatement with full compensation for all time lost, with full vacation privileges and seniority restored."

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is no showing that Carrier was arbitrary or capricious in disciplining Claimant.

The position of the Organization may be summarized as follows:

1. Award No. 21000 is not "res Judicata" because it was merely a dismissal award, and the result was based on procedural rather than substantive grounds. References in Award No. 21000 to the August 22, 1963, Agreement were dicta and not binding.^{2/}

2. The August 22, 1963, Memorandum Agreement was valid and binding because all of the employees who signed it understood that Claimant would in fact be reinstated after January 1, 1964, on a leniency basis.

3. The reinstatement of all the employees except Claimant was prima facie evidence that Carrier was arbitrary and capricious.

4. Carrier refused to reinstate Claimant because he was a General Chairman. As such, Carrier's arbitrary action effectively

^{2/} "Petitioner did file a 73 page position but virtually all of this went to issues finally and conclusively settled by negotiation between these same parties -- petitioner himself, (as representative of the organization and again as individual claimant) and the General Manager of the carrier, as is clearly established by the August 22, 1963, Memorandum Agreement." Award 21000.

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thwarts and frustrates the Organization's right to select its representative and to bargain collectively under the Railway Labor Act. If an Organization is to be able to represent its members, the Claimant, as General Chairman, must have immunity from charges in the performance of his official duties.

5. Claimant was not afforded procedural "due process" as required by Article XXI (b) of the Agreement between the parties in that the alleged charge contained no specific rule violation.

* * *

The crucial preliminary consideration which must be given in this dispute is the validity, force and effect to be given to the August 22, 1963, Agreement and Release. It is, on its face, a binding agreement between the parties signed by the Claimant not only as an employee but also as an authorized representative of the Organization. The Agreement spells out with specificity a resolution of the issues between the parties.

Unless there is a showing, in the record, of a preponderance of probative evidence that such agreement was obtained by fraud and deceit, it must stand. The burden of proof in this instance was on the Organization.

A careful and detailed analysis of the record reveals no such showing. The Board agrees, therefore, with the finding of

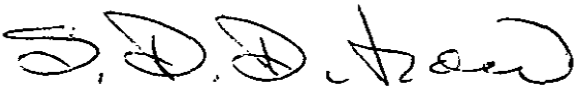
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Aware 21000 that the central issue surrounding this claim was "finally and conclusively settled by negotiation *** as clearly established by the August 22, 1963, Memorandum Agreement."

Having so determined, it is unnecessary to consider the ancillary questions raised in this dispute.

AWARD

Claim is denied.

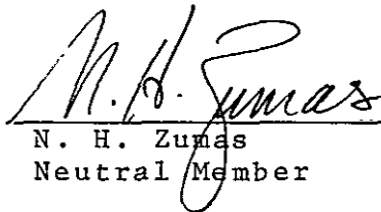


S. D. Dutrow
Carrier Member



H. G. Kenyon
Organization Member

Discontinuing



N. H. Zumas
Neutral Member

DATED: May 22, 1972