

**BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**UNION PACIFIC RAILROAD COMPANY  
(former Chicago & North Western Transportation Company)**

**Case No. 255**

**Award No. 223**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

1. The resignation of Manuel Martinez dated June 15, 1999, was revoked and should be considered void because it was signed under duress in violation of the Agreement and the Carrier's own policy. (System File 9KB-6553T/1209026 CNW).
2. As a consequence of the violation in Part (1) above, the Claimant shall be reinstated to service with seniority and all rights unimpaired, compensated for all lost time, made whole for losses as a direct result of the wrongful dismissal, and have his record cleared of any reference to the incident.

**FINDINGS:**

On July 26, 1999, the Organization filed a claim on behalf of Claimant Manuel Martinez alleging that the Carrier violated Agreement Rule 19 and its own Upgrade Policy when it intimidated and threatened the Claimant into signing a resignation on June 15, 1999, without a fair and impartial hearing and Organization representation. This incident stems from problems that the Claimant's wife had with the Claimant's Carrier credit card which, the Organization argues, the Claimant's wife was taking care of out of the Carrier's Visa Administration Office in Omaha. The Organization asserts that the Claimant had very little knowledge of the inaccurate credit card charges that his wife was handling with Visa Administration. The Organization argues that on June 15, 1999, Carrier representatives went to the Claimant's work site and

informed him that he was being fired and that if he did not resign, his wife would be arrested at work and she would lose her job. The Organization contends that neither Carrier representative informed the Claimant of his right to a formal hearing prior to his resignation, nor did either representative read the resignation to the Claimant. The Organization argues that the Carrier knew of the Claimant's illiteracy and used that to coerce a resignation from him. The Organization maintains that the Carrier presented the Claimant with an ultimatum, i.e., a choice between resigning or the arrest of his wife and that the Claimant had but one choice, which was to execute the letter of resignation. Therefore, the Organization contends, the Carrier denied the Claimant, a twenty-year employee, his right to due process

The Carrier denied the claim contending that it had evidence that the Claimant's wife fraudulently used the Carrier's credit card issued to the Claimant. The Carrier argues that several fraudulent credit card transactions were made by the Claimant's wife between February and June 1999 in the amount of approximately \$2,000, which the Carrier maintains is a felony. The Carrier contends that when it confronted the Claimant with the evidence of the misuse of the credit card, the Claimant admitted knowing about the transactions and asked what the consequences were. The Carrier contends that it informed the Claimant that his wife would be arrested for a felony count and that the Claimant was subject to immediate disciplinary action up to and including termination of employment. The Carrier also contends that it informed the Claimant that he would face a formal investigation for fraudulent use of the credit card. The Carrier argues that the Claimant requested an alternative course of action, and the Carrier indicated to the Claimant that if he were to resign and pay the entire amount of the fraudulent charges, all charges would be dropped. The Carrier maintains that the Claimant agreed to resign

and that it then prepared the letter of resignation which was read to the Claimant and witnessed.

The Carrier contends that the Claimant was in no way coerced into resigning. The Carrier argues that the Claimant could have easily called his Organization representative if he was unclear as to what his resignation would entail, but he did not. The Carrier also maintains that the Claimant is not illiterate as he passed all of the yearly rules classes and attended and passed training classes, he routinely entered his work time into the computer, and he filled out the application for procurement of the Carrier credit card and signed the acknowledgement letter for its use.

The parties being unable to resolve the issues, this matter came before this Board.

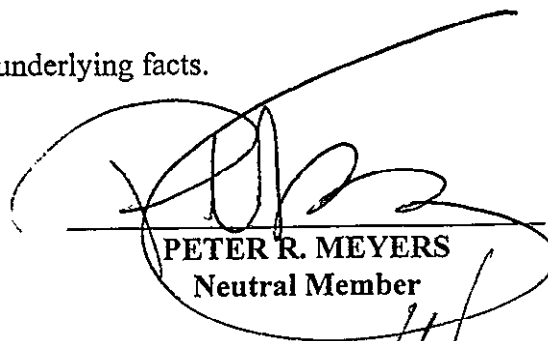
This Board has reviewed the record in this case, and we find that given this unique set of facts, it is clear that the Claimant did resign his position on June 15, 1999. However, it is also clear that there was involvement by a third party which confused the situation greatly for the Claimant and the Carrier. The Claimant did admit some culpability in this matter and, therefore, bears some responsibility. However, this Board believes that the Claimant's twenty years of unblemished service entitles him to be reinstated to service with the Carrier with full seniority, but without back pay for the period of time that he was off. This case shall not have any precedential value because of the uniqueness of the underlying facts.

**Award:**

The claim is sustained in part and denied in part. The Claimant shall be reinstated to full seniority, but without back pay. This award shall have absolutely no precedential value because

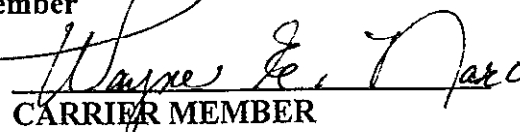
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of the uniqueness of the underlying facts.

  
PETER R. MEYERS  
Neutral Member

  
ORGANIZATION MEMBER

DATED: 12-1-00

  
CARRIER MEMBER

DATED: 12-1-00