

Award No. 18857
Docket No. MW-19318

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY

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

- (1) The Carrier violated the Agreement when it dismissed Trackman Darryl LaGrange without a hearing as required by Rule 19(a) (System File CR&IC-P-391).
- (2) Trackman Darryl LaGrange be reinstated with all rights unimpaired and compensated for all wage loss suffered because of the violation referred to within Part (1) of this claim.
- (3) The Carrier shall also pay the claimant six percent (6%) interest per annum on the monetary allowance accruing from the initial claim date until paid.

OPINION OF BOARD: Rule 19(a) of the Agreement clearly provides for a hearing or in sufficiently serious cases a hearing following suspension. The Claimant was not accorded such contractual right. Carrier contends that the rights under the Agreement are not available to an employe who resigns. If it is found that the Claimant resigned of course the claim must be denied. If Claimant did not resign the claim must be sustained in view of Carrier's failure to grant Claimant a hearing. In this connection the Carrier, cannot unilaterally decide that the Claimant had resigned and thereby deny him the benefits of the Agreement. The hearing is a matter of right and it matters little whether the hearing concerned Claimant's leaving his place of work on July 23, 1970 or whether it was to determine whether he was discharged on July 24, 1970 as alleged by the Claimant. The precipitate action taken by Carrier is not consonant with the best principles of collective bargaining.

There are conflicts of evidence as to what happened on July 23, 1970. Claimant alleges he left work on that day with the approval of his Supervisor and when he returned to work on July 24, 1970 his Supervisor told him he was through. The Carrier alleges he left work on July 23, 1970 without permission and did not report on July 24, 1970. It is unnecessary to resolve these conflicts as there are sufficient undisputed facts which will decide the controversy. Thus it is undisputed that Claimant called the Carrier's General Superintendent by telephone at his home on July 24 or 25 and the General Superintendent " * * * told him to contact his local committee." It is undisputed that on July 29, 1970 a scant 6 days after the July 23rd incident Claimant addressed a letter to the General Superintendent requesting a hearing because he felt he " * * * was

unjustly treated." On July 31, 1970 General Superintendent responded referring him to the local committee as he had done in his telephonic conversation with Claimant. Whatever doubt which might have existed as to whether he resigned was resolved by his phone conversation with the General Superintendent and the exchange of letters noted above.

On July 29 it was not too late to grant the hearing the request for which was proper under Rule 19(f). Moreover it was beyond the Carrier's competence to decide that Claimant must take the matter up with the local committee after he had determined to process his claim through the Organizations General Chairman and constitutes another denial of a hearing. The telephone call and the letter of July 29 are not the acts of an employe who had resigned.

It is unnecessary to consider the allegations that Claimant was in the past an undependable employe. Whatever his conduct prior to July 23, 1970 it was not the proximate cause for his separation and the record reveals Carrier had condoned the past conduct.

Carrier's offer in August 1971 to rehire Claimant does not toll its back pay liability as it was a conditional offer which provided for no back pay and the discontinuance of his claim before this Board. The channels of communication between parties to Agreements and this Board must be kept open and unclogged otherwise this Board will be unable to discharge its duties under the Act.

Having found that Claimant was denied a hearing under Rule 19(a) his separation from service without such hearing was violative of the Agreement. Accordingly, Claimant is entitled to an immediate offer of reinstatement to his former position without prejudice to his seniority or other rights and to be made whole for any loss of wages suffered. The claim for interest is denied as Rule 19(c) of the Agreement dealing with reinstatement makes no provision therefore.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1971.

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