

Award No. 1019

Docket No. 1028

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

PARTIES TO DISPUTE:

WALTER J. NOCTOR

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim and request of Walter J. Noctor that—

1. Car Foreman Walter J. Noctor displaced without the employing carrier showing good and sufficient cause for severe discipline rendered.
2. Reinstatement as Car Foreman effective March 1, 1953 account improperly removed from service in that capacity, in violation of Rules 15 and 16(a) of Agreement signed by the CMStP&P Railroad and the Locomotive and Car Department Foremen.
3. Reimbursed for the wage loss suffered.

EMPLOYEE'S STATEMENT OF FACTS: On February 9, 1953 was informed verbally by Mr. C. E. Barrett, then District General Car Foreman, Lines West, that I was to be removed as Car Foreman at Harlowton, Montana effective February 15, 1953 and he advised my signing a resignation. At that time he informed me the reason for my removal was failure to have three shifted loads properly inspected and blocked, causing them to shift enroute. No damage to equipment or derailment occurred. Cars were set out at Miles City for adjustment. Loads were billed out of Harlowton, Montana without release from me. Also, the way bills on these cars did not have Form 3570 (high and wide load cards) attached. Since the Store Department did not have my release on these cars and billed them out without consulting me to see if they were properly blocked and inspected, I feel it was their error and not mine that these cars left Harlowton in this condition. This was mishandled by the Store Department and not the Car Department and therefore I felt that the charge against me was unjust.

At the time that Mr. Barrett first confronted me with this dismissal charge, I informed him that there were immediate personal obligations that had to be met and he therefore decided to change my dismissal notice to be effective March 1, 1953. When I again talked to Mr. Barrett about my position on March 1, 1953, he informed me that I had made a gentlemen's agreement to resign my Car Foreman's rights as of that date. I made no agreement whatsoever at any time to resign. I asked him again at this time for a written charge, as he had ignored my previous wire in this regard; however, he refused to comply with my request. He also refused Mr. J. Walter's request, dated March 1, 1953. (Exhibit No. 2.)

After having been informed by Mr. Barrett that I was to be relieved of my duties as Supervisor, I wrote to Mr. J. Walters, a representative of the Supervisors Association, and asked that he arrange for a formal investigation of this matter. He requested that I write all facts of my position to him, which I did. (Exhibit No. 1.)

On February 10, 1953 I went to Milwaukee to personally contact Mr. J. A. Deppe, then Superintendent of the Car Department, now retired, to ask him the reason for the measure taken against me; however, before my departure I saw that my job was protected by Mr. Henry Buckley, Relief Car Foreman. He referred me to the three shifted loads that had departed from Harlowton without proper blocking and stated that they could not condone such inefficient supervision. I explained the true facts of this instance, to which he had no comment. Mr. Deppe stated that I had until April 1 to decide whether to return to Milwaukee, where I held my seniority as Carman or go to Miles City and work in the capacity as Carman, and relinquish my seniority in Milwaukee.

It was my impression that my hearing was to be held shortly after March 1; therefore, I returned to Harlowton to await the written notice. I received no written notice that a hearing was to be held; however, on March 16 I learned that Mr. Barrett was in Miles City and was conferring with Mr. Jack Walters, my representative, on this matter. I telephoned Mr. Walters at this time and asked him if I should come to Miles City as it was my understanding that no conference should be held between the two men without my presence. Mr. Walters told me not to come to Miles City, that he would let me know further, as he was talking to Mr. Barrett. I waited for further word from Mr. Walters until fifteen minutes before the arrival time of the east-bound Hiawatha on March 17, whereupon I again telephoned to Mr. Walters, and at that time he stated that I should come to Miles City that day but made no reference to an investigation. Upon my arrival at Miles City that evening I was met by Mr. Walters. I then asked if I was to have the investigation that I requested. In answer to this question, he asked me to come to the Car Department's office and have a conference. Upon entering the office I was met by Mr. Barrett and my other representatives, Mr. E. Holter and Mr. A. Boehmer, and Car Foreman Mark Johnson. I requested a secretary when I saw that none was present and was then told there would be no written investigation. The time spent on March 17 was not in going over my case properly but my pointing out to my representatives the reason for my wanting an investigation, and I was informed by them they could do nothing in my behalf. In other words, they refused to represent me. I was again asked by Mr. Barrett for my resignation as he stated it would be better for my future. I positively did not sign a resignation at this time or any other time; however, upon my demand to see my personal record on June 10, 1954, I saw three resignations signed with my name, in the Car Department's office in Milwaukee, and one signed resignation in Mr. Wellnitz's office, President of the Supervisors Association, dated March 17, 1954. The signature on these resignations is not mine.

On March 20, 1953 I wrote to Mr. J. A. Deppe, Superintendent of Car Department, stating that I felt I had been unjustly treated. (Exhibit No. 3.) He replied that he could not understand my position since Mr. Barrett told him that I had resigned.

On May 11, 1953, I received a reply to my letter of April 22, 1953 to Mr. C. E. Wellnitz, President of the Supervisors Association, to which I had appealed my case. (Exhibit No. 4.) He stated also that I had resigned, closing my case.

I also appealed my case with a personal interview with Mr. L. F. Donald, Vice President, Operating Department, and Mr. M. Green, then Assistant Superintendent of the Car Department.

Having referred my case to the highest designated officer of the Car Department and failing to reach an adjustment in this matter, I referred my case to Mr. H. J. Sassaman of the National Railroad Adjustment Board. (Exhibit No. 5.)

I also attach a letter written by the Local Chairman of the Carmen at Harlowton, Montana, Mr. F. C. Jennings, with his recommendation that I be retained as Car Foreman. (Exhibit No. 6.)

POSITION OF EMPLOYEE: I maintain this is a violation of the following rules of the Supervisors Schedule:

RULE 15—

This rule shall not operate to prevent the removal of a supervisor who does not qualify for the position for which he has made application; however, a supervisor, who has established seniority as such, shall be accepted or rejected within ninety (90) days from the date he begins work on each new assignment. When not notified to the contrary within the time stated, it will be understood that he becomes an accepted supervisor on that assignment.

RULE 16(a)—

Supervisors who have been in the service as such for ninety (90) days or more will not be taken out of service or dismissed, without hearing, at which they may be represented by supervisors of their choice or duly accredited representatives of the Association. Suspension pending a hearing will not be considered a violation of this rule. Hearing will be held within ten (10) days of the time the charge is made or supervisor suspended.

My duties as Supervisor, Car and Wrecking Foreman, date from July 21, 1941. My service with the carrier is 28 years.

Walter J. Noctor hereby affirms that all data submitted in support of his position has been presented to the other parties herein and has been made part of the particular question in dispute.

Oral hearing is desired.

CARRIER'S STATEMENT OF FACTS: On February 9th, 1953 Mr. C. E. Barrett, District General Car Foreman, advised Mr. Walter J. Noctor, who was then Car Foreman at Harlowton, Montana, that because of his having failed to properly discharge his duties as car foreman, it was going to be necessary to remove him from that position. Mr. Barrett at that time explained to Mr. Noctor the various specific charges. Also at that time Mr. Barrett informed Mr. Noctor he would be given a hearing if he wished one. Mr. Noctor, at that time, stated he did not wish a hearing and that he would prefer to resign. He asked Mr. Barrett to be allowed to remain on the car foreman's assignment until March 1st, 1953 at which time he would resign as car foreman. Mr. Barrett acceded to his request in that regard.

On March 1st, 1953 Mr. J. S. Walters, Vice President, Milwaukee Road Mechanical Foremen's Assn., Inc., wrote Mr. Barrett the following letter:

"Have been notified that Car Foreman W. J. Noctor, Car Foreman, Harlowton, Montana has been removed from service.

Please arrange for an investigation to bring out the facts relative to this action, per Schedule rule No. 16 of the Milwaukee Road Mechanical Foreman's Association Inc."

in reply to which Mr. Barrett wrote Mr. Walters as follows under date of March 9th, 1953:

"This will acknowledge receipt of your letter March 1st having reference to Car Foreman Noctor at Harlowton.

Possibly you are not familiar with what occurred at Harlowton, as it is my understanding that a supervisor can resign if he so wishes and this preference was expressed by Mr. Noctor and consideration was given his request, by which he benefited in several ways.

Plan on being at Miles City some time this week and no doubt Mr. Noctor will be there also. Will it be satisfactory to have a meeting with you at that time? If not will arrange otherwise."

Mr. Barrett met Mr. Walters at Miles City, Montana on March 17th, 1953. Others present at that meeting were the following:

Walter J. Noctor.
E. L. Holter, Night Roundhouse Foreman and Trustee of the MRMFA.
T. A. Bohmer, Asst. Roundhouse Foreman and Trustee of the MRMFA.
M. L. Johnson, Car Foreman at Miles City, Montana.

At that time Mr. Barrett reviewed, in detail, the conversation between himself and Mr. Noctor at Harlowton on February 9, 1953 after which Mr. Noctor stated Mr. Barrett advised him, on February 9, 1953, that it was going to be necessary to remove him from the car foreman's position, that he would be given a hearing if he so desired and that instead he told Mr. Barrett he preferred to resign and asked Mr. Barrett to allow him to remain on the car foreman's assignment until March 1st, 1953 at which time he would resign.

After a complete review of the matter during the hearing on March 17th, 1953 Mr. Noctor, in the presence of Messrs. Walters, Holter, Bohmer, Johnson and Barrett, signed a resignation reading as follows:

"Please consider this as my resignation as Car Foreman at Harlowton, effective March 1, 1953."

A photostat copy of his resignation is attached as Carrier's Exhibit "A."

Mr. Noctor wrote Mr. J. A. Deppe, Superintendent Car Department, Milwaukee, Wisconsin, on March 20th, 1953 and on March 26th, 1953 Mr. Deppe replied to Mr. Noctor. Copy of Mr. Deppe's letter is attached as Carrier's Exhibit "B." There was no further handling of this matter with the Carrier on the part of Mr. Noctor or his representatives. There was no appeal made to Mr. Dowling, Assistant to Vice President, who is the highest officer designated to handle such matters.

On September 27th, 1954 Mr. Downing received Mr. Parkhurst's letter of September 24th, 1954 advising of intention of claimant to file an ex parte submission with the Fourth Division of the NRAB.

Following receipt of Mr. Parkhurst's letter Mr. Downing wrote Mr. C. E. Wellnitz, President, MRMFA on October 5th, 1954. A copy of Mr. Downing's letter is attached as Carrier's Exhibit "C." In reply, Mr. Wellnitz wrote Mr. Downing on October 11th, 1954. Copy of Mr. Wellnitz' letter is attached as Carrier's Exhibit "D."

POSITION OF CARRIER: It is the Carrier's position:

1. That the claimant, Mr. Walter J. Noctor, resigned as car foreman effective March 1st, 1953.
2. That there exists no dispute between the Carrier and the Milwaukee Road Mechanical Foremen's Assn., Inc. which is the Organization with whom the Carrier holds a contract, the scope of which includes "Supervisors below the rank of General Foreman in the Locomotive and Car Departments" which would extend to and cover the position of car foreman at Harlowton, Montana, the position occupied by the claimant prior to March 1st, 1953.

3. That Mr. Noctor was not denied a hearing as he alleges but to the contrary, he was offered a hearing in advance of his removal from the position and he, at that time, rejected a hearing, stating he preferred to resign. He was also offered a hearing on March 17th, 1953 when three representatives of the MRMFA were present and at that time, in the presence of 5 witnesses, he tendered his written resignation as car foreman.
4. That if, as alleged by Mr. Noctor on March 1st, 1953, he "wired for a written charge of the reason for my removal from the service," such a wire was not received by Mr. Barrett. However, Mr. Barrett did outline to Mr. Noctor on February 9th, 1953 the charges. Mr. Barrett received Mr. Walters' letter dated March 1st, 1953 requesting hearing for Mr. Noctor and Mr. Walters was advised by Mr. Barrett that a hearing would be granted and same was granted on March 17th, 1953.
5. The resignation dated March 17th, 1953 was signed by Mr. Noctor at Miles City on March 17th, 1953 and the resignation bears his personal signature, proof of which is to be found in an examination of his signature appearing on Carrier's Exhibit "A."
6. That the provisions of Rules 15 and 16(a) upon which the claimant relies do not support the claim. Rule 15 has no application here. The provisions of the rule do not, as the claimant apparently alleges, prevent the removal (in accordance with the provisions of the schedule rules) of an employe from a position to which he has been assigned for more than 90 days, when his performance is unsatisfactory. As to the provisions of Rule 16(a), the record clearly shows that the claimant was not removed from his position or otherwise disciplined without a hearing. He was offered a hearing on February 9th, 1953 and he continued to occupy the car foreman position until March 1st, 1953. On February 9th, 1953 he rejected the hearing and his request that he be allowed to continue on the position until March 1st, 1953 and then resign, was granted. The hearing which he was accorded on March 17th, 1953 bears out those facts, further proof of which can be found in Mr. Wellnitz' letter of October 11th, 1954 (Carrier's Exhibit "D").

We should like to direct the attention of your Honorable Board to the provisions of Rule 17—Claims and Grievances, as contained in the Schedule Agreement of November 1st, 1950. That rule reads:

"(a) All claims and grievances arising under the terms of this agreement must be presented in writing within thirty (30) days from date of occurrence upon which such claim or grievance is based. If the decision is not acceptable subsequent appeals up to and including the highest officer of the Carrier designated to handle such matters must be made in writing within thirty (30) days from date of previous decision.

(b) The decision of the highest officer of the Carrier designated to handle such appeals will be considered final and binding unless, within thirty (30) days thereafter, he is notified in writing that the decision is not acceptable. Subsequent handling must be instituted within six (6) months of the date of such decision.

(c) Claims and grievances not handled in accordance with the provisions of this rule shall be deemed to have been abandoned.

(d) Claims for payments arising out of violations deemed or decided to be continuing or recurring shall be limited to a period commencing not earlier than the date of first written presentation to the Carrier."

"Subsequent appeals up to and including the highest officer of the Carrier" have not been made; in fact, as stated earlier in our position, prior to receipt of Mr. Parkhurst's letter dated September 24th, 1954 the undersigned, as the

highest officer designated to handle appeals, had no knowledge of this case. We point further to the fact that "subsequent handling" was not instituted within 6 months. By reason of the fact that the claim was not handled in accordance with the provisions of Rule 17, the claim must be deemed to have been abandoned.

By the claim presented to your Honorable Board the claimant seeks reinstatement to the position of car foreman which is the classification from which he voluntarily resigned as of March 1st, 1953. There is no merit to the claim, it is not supported by schedule rule, it has not been handled in accordance with the provisions of Rule 17 and the Carrier, therefore, respectfully requests it be denied.

The Carrier respectfully requests opportunity for oral hearing.

(Exhibits are not reproduced.)

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

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

The parties to said dispute were given due notice of hearing thereon.

The record shows that the claimant presented his claim and request to this Division without first progressing said claim and request in accordance with the provisions of the applicable schedule agreement and Section 3 First (i) of the Railway Labor Act.

AWARD

Claim and request dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Illinois, this 13th day of December, 1954.