

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12436  
Docket No. 12490  
92-2-92-2-5

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers  
(  
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Union Pacific Railroad Company is violative of Rule 22, 37 and Ruling 19, but not limited to, of the controlling agreement effective November 1, 1976, and has dealt unjustly with the damaged Electrician J. D. Loyd at Salt Lake City, Utah, when they discriminated against him when unable to return to work account of being under doctor's care. The Carrier did not afford him a fair and impartial investigation and assessed discipline of permanent dismissal by letter dated March 19, 1991.

2. That accordingly, the Union Pacific Railroad Company be ordered to compensate Claimant as follows:

- (a) Compensate Claimant for all time lost commencing 30 days from his release to service on March 4, 1991, (when Claimant would have returned to service) and continuing until returned to service;
- (b) Make Claimant whole for all insurance benefits;
- (c) Railroad Retirement Benefits;
- (d) Make Claimant whole for all vacation rights;
- (e) Full reinstatement with seniority rights unimpaired;
- (f) Make Claimant whole for all other benefits that would have accrued had Claimant been working.

FINDINGS:

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

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The voluminous file, which appeals the dismissal of the Claimant, contains the same facts and arguments that were advanced in the appeal of the Claimant for reversal of a previous 30-days deferred suspension assessed for the same activities described in this case. The Board decided in Second Division Award 12412 that the appeal of the 30-day deferred suspension must be dismissed. That decision in pertinent parts reads:

"This dispute has been settled as part of an overall settlement of a personal injury lawsuit brought by Claimant against the Carrier. The settlement language reads in pertinent part: 'I release and forever discharge the Union Pacific RR Company from all claims and liabilities arising under any and all collective bargaining agreements, mergers, or other protective agreements or arrangements. It is understood that I will be retained on the roster as a permanently disabled employee without rights to return to active service. . .'"

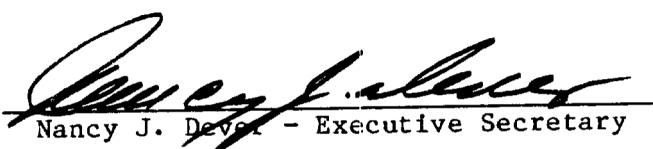
Since this dispute is an extension of the problem decided in Award 12412, we concur in the decision.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September 1992.