Award No. 2644
Docket No. 2428
2-L&N-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the carrier unjustly removed the name of Carman F. O. Neikirk from the Carmen Seniority roster, Ravenna, Kentucky.

2. That accordingly, the carrier be ordered to restore this employe's name to the Carmen Seniority roster and his rights as a retired employe.

EMPLOYES' STATEMENT OF FACTS: On February 14, 1925, F. O. Neikirk, hereinafter referred to as the claimant, was employed by the carrier as carman at their Ravenna, Kentucky shops.

The claimant worked in this capacity, continuously, until and including August 20, 1949. On this date (August 20, 1949) the claimant was seriously injured in wrecking service.

On January 20, 1950 the claimant, due to the aforesaid injury, made application for annuity account of disability with the Railroad Retirement Board. His request was granted and he is now on disability retirement.

As a result of this injury and failing to make a suitable settlement with the carrier, the claimant took legal action. In February 1955, a settlement of the legal action was made out of Court.

The claimant's name remained on the carmen seniority roster at Ravenna, Kentucky until August 11, 1955 at which time it was removed by the carrier's general foremen.

after it delivered its check in full payment and satisfaction of the judgment rendered in his favor." (Emphasis supplied.)

Since the settlement with claimant was made on the basis of his claim of permanent disability, the carrier's removal of claimant's name from its seniority rosters is in accord with the awards cited. The carrier submits that its action should therefore be upheld, and respectfully requests the National Railroad Adjustment Board to deny this claim.

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 employe 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.

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

This claimant has been before the Division previously in Docket No. 1685, subject of Award 1880. We must assume that the status of claimant, prior to the incident which generated this dispute, was as stated in the Dissent of Carrier Members to that Award. That dissent read, in part, as follows:

> "The practice on the Louisville and Nashville Railroad in the case of an employe granted a disability annuity under the Railroad Retirement Act is to permit such a person to retain his seniority standing until the age of 65.
>
> In case the Retirement Board determined that such person sufficiently recovers so as not to be entitled to disability allowance, such person might be restored to service provided he could pass the necessary examinations."

In the instant dispute claimant complains that the carrier unjustly removed his name from the carmen's seniority roster and asks for the restoration of his name to that roster. He does not ask for restoration to service nor has he made any monetary claims in lieu thereof.

Carrier answers that claimant has relinquished all rights to his employe status as a result of the settlement of his claim for a permanent disability allegedly suffered as a result of injury which was incurred in connection with the performance of assigned duties.

It is true that in his complaint filed in a legal action he alleged that he was permanently disabled and would be in the future prevented from engaging in his previous occupation. Numerous awards are cited in support of carrier's position that claimant is estopped by his allegations in suit to ever reassert his employment status. Claimant's complaint and receipt in compromise appear in the submission.

We cannot agree with carrier's conclusion that claimant sacrificed his seniority standing by executing the receipt in compromise. As the above quotation from the dissent indicates a disabled employe is entitled by past

practice to retain his seniority standing until the age of 65, unless the Retirement Board earlier determines that he has sufficiently recovered so as not to be further entitled to disability benefits. He then faces the hurdle of a physical re-examination before he may be entitled to restoration to service.

The situation before us is not expressly covered by the agreement. What appears in the receipt in compromise to bargain away this claimant's seniority rights? Nothing. The sum received was "on account of all injuries to the person, including those that may hereafter develop as well as those now apparent and all damage to and loss of property claimed to have been sustained by me on August 18-20, 1949" as a result of the alleged accident. The concluding paragraph reiterates that it was in full settlement of his suit growing out of the alleged personal injury.

It is then provided that the suit is to be dismissed "with prejudice" meaning simply that the same claim for injuries could not be relitigated. The receipt in no sense purports to resolve claims other than those based upon claimant's alleged physical injuries in 1949. If the parties had intended to do so the receipt could have been broadened to include the release of seniority rights but this was not done and we cannot add to the terms of the settlement agreement. This dispute is therefore distinguishable from those disputes subject of several First Division awards to which our attention has been directed wherein broad, all-inclusive releases were taken.

Under the narrow issue presented in this submission the doctrine of estoppel is not brought into play. Claimant, we reiterate, is neither seeking restoration to service nor compensation in lieu thereof and it is only in connection with such demands that estoppel could be asserted by the carrier based on the receipt in compromise.

Apart from restoration to service other rights appear to be involved. The employes' submission states that there "are several, including insurance, etc." Employes' Exhibit C indicates that group insurance rights may be at stake. The carrier's submission is silent on this phase of the case. Rather than place at risk rights concerning which we are ill-informed we simply find that claimant's removal from the seniority roster was not justified either by the terms of the applicable agreement or by the legal effect of the receipt in compromise. Restoration of his name to the seniority roster shall be made.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October, 1957.