

**Award No. 4555
Docket No. 4539
2-C&NW-MA-'64**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Chicago and North Western Railway Company unjustly dismissed Machinist Helper S. P. Lopez, Proviso, Illinois Engine House on July 13, 1962.

2. That accordingly, the Chicago and North Western Railway Co. be ordered to reinstate this employe with seniority rights unimpaired and compensate for all earnings and fringe benefits (vacation, holidays, premiums for hospital, surgical, medical and group life insurance) deprived of starting July 13, 1962 until case is settled satisfactorily, in compliance with Agreements.

EMPLOYEES' STATEMENT OF FACTS: The Chicago and North Western Railway Company employed Mr. S. P. Lopez during November, 1950 and he worked until dismissed on July 13, 1962. The investigation on charges of not properly performing his duties on June 30, 1962 was held by General Master Mechanic A. A. Enders at Proviso, Illinois on July 11, 1962.

The claimant was dismissed from the carrier's service on July 13, 1962 after which an appeal was filed with the carrier. After rejection by the Master Mechanic on July 26, 1962, the claim was appealed on July 31, 1962 to Mr. E. L. Walston, General Superintendent of Motive Power. Sixty days elapsed without a reply and on November 1, 1962 the general chairman wrote the general superintendent of motive power calling attention to the time limit rule and urged that the claim be allowed as presented.

On November 14, 1962 the general superintendent of motive power replied alleging that he had replied on August 21, 1962 and attached a copy of the alleged reply.

On December 8, 1962 the claim was appealed to Director of Personnel Mr. T. M. Van Patten.

Mr. Van Patten replied under date of December 18, 1962.

“Mr. Lopez was reinstated on August 10, 1962, and signed a statement waiving all claims for compensation for time lost while being out of service in consideration for being returned to service with seniority and other rights restored.”

There is therefore no basis for the contention of the general chairman that the claim is payable under the time limit rule.

At this time the carrier further wishes to call attention of this board to the fact that even if this board were for some reason to find the claim otherwise had merit, which it clearly does not, there is no support whatsoever for that part of the claim involving “fringe benefits (vacation, holidays, premiums for hospital, surgical, medical and group life insurance)”.

The carrier submits that the claim should be denied in its entirety.

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.

Parties to said dispute were given due notice of hearing thereon.

The organization claims that an employe at carrier's Proviso, Illinois Engine House was unjustly dismissed on July 13, 1962.

The record discloses that the affected employe was observed, for a period of at least 25 minutes, washing his car on company time. After an investigation, during which he admitted this fact, the employe was dismissed.

On July 24, 1962, a request was made to the carrier to restore the employe to his former position with all rights unimpaired and compensate him for all earnings and fringe benefits lost. That request is the basis for this claim. The request was denied by the carrier on July 26 and it was restated by the organization on July 31 in accordance with the agreement terms.

It is not disputed that on August 10, 1962, the employe signed a waiver of any claim for compensation in consideration for his being returned to service with seniority and other rights restored.

The organization charges that the carrier violated Article V, Section 1(a) of the August 21, 1954 agreement because it (carrier) failed to notify the organization in writing of the reasons for denying the claim. We are asked to allow the claim as presented because of the terms of Section 1(a) of the 1954 agreement.

The organization denies that it received a letter from the carrier dated August 21, 1962. The carrier states that the letter in question was sent and that it advised the organization that the dispute had been disposed of on the property, i.e., when the employe signed the waiver mentioned and accepted the reinstatement offer.

This record does not contain sufficient evidentiary facts to allow us to determine if the disputed August 21, 1962, letter was sent, and if so, was it received. Being unable to resolve this difference in position of the parties and being of the opinion that a determination would be necessary before a finding could be made that Section 1(a) of the 1954 agreement had been violated we proceed to a determination of the award for another reason entirely. We express no opinion on the position advanced concerning Article V, Section 1(a) of the August 21, 1954 agreement.

The carrier argues that the claim was timely disposed of on the property when, on August 10, 1962, the employe signed the mentioned waiver and returned to work. It also states that there is a general rule in effect on this Board which provides that an employe having a money claim may settle it without regard to the wishes of his representative. To support this latter position the carrier refers us the following prior Board Awards:

First Division, Award No. 16675,

“* * * Therefore the general rule that one having a money claim may settle it without regard to the wishes of his representative must prevail.

Award: Claim denied.”

Fourth Division, Award No. 1392,

“From the above it appears that this dispute has been finally settled on the property and that there is nothing for this Board to determine. It appears that the controversy was adjusted on terms satisfactory to the Claimant and there is no contention that he did not act freely and voluntarily. See Award 983 of this Division and Awards Nos. 5405, 11762, 13958, 15019 and 16675 of the First Division.

* * * * *

“Award: Claim dismissed.”

Special Board of Adjustment No. 383, Award No. 17, Case No. 204,

“* * * Claimant accepted an offer made to him by Carrier of reinstatement to his position solely on the basis of managerial leniency, with the express understanding that no claim would be progressed or payment for wages lost as a result of his dismissal. This agreement was made between Claimant and Carrier without prior notice or approval to or by the BRT.

Under similar circumstances, Divisions of the National Railroad Adjustment Board have held that such agreements are binding and conclusive of the claim * * *

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Award: Claim denied.”

The record presented to us does not contain any material, or reference thereto, which would tend to show that the organization communicated to the carrier an objection to its dealing directly with the actual claimant herein. Nor is any evidence offered to show that the carrier took advantage of the

employee when he signed the waiver. Had the record shown that either of these conditions existed then we would be inclined to distinguish this case from those prior awards, cited above, which have held that such an agreement or waiver as we have before us is binding and conclusive of the claim. However, for the sake of uniformity of awards and for the reasons given, we yield to the weight of authority of the prior awards and find that the claim must be denied because the employee settled his own claim on the property on August 10, 1962.

AWARD

Claim denied in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July 1964.