

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Pacific Fruit Express Company

Dispute: Claim of Employees:

1. That the Pacific Fruit Express Company violated Rule 14, Appendix "A" of the controlling agreement when they denied Carman O. J. Holmes his ten (10) days vacation earned in the year 1981 for the year 1982, Tucson, Arizona.
2. That accordingly, the Pacific Fruit Express Company be ordered to compensate Carman Holmes in the amount of ten (10) days, plus 10% interest annually, for vacation not allowed in the year 1982.

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.

This dispute raises the issue of whether an employee is entitled to credit toward the number of days of compensated service needed to qualify for vacation, in an amount represented by the period by which an actual, disciplinary suspension is reduced by the Carrier, and for which the employee receives compensation at his normal rate. For the following reasons, we find that this issue is moot, and that the Claim must be dismissed.

Claimant was employed at Carrier's Tucson, Arizona facility. After a Disciplinary Hearing on March 18, 1981, into charges of dishonesty, Claimant was suspended from service for a 90 day period from April 3, 1981, through July 2, 1981, without pay. In the process on the property of negotiation and conference between the General Chairman and Carrier's Manager of Industrial Relations with respect to Claimant's 90 day suspension, an agreement reducing

the assessed discipline to 30 days was reached. Evidence of this agreement is contained in a letter from the Manager to the General Chairman which was expressly referenced by the Carrier during the handling of this Claim on the property. The letter is dated December 18, 1981, and states in pertinent part:

"Therefore, we have mutually agreed that full and final disposition of this entire case will be effected by PFE payment to Claimant O. J. Holmes of such wages as he would have received for the other 60 days had he not been suspended during that time. I also agreed that I shall order the documentation hereof to be removed from his Personal Record file which will thus be clear of this matter.

By copy of this letter, am directing that this case be so finalized in complete settlement of all claims herein howsoever arising and by whomsoever filed. Am giving you three (3) copies hereof, one that you may have record of the concurrence herein extended me in our phone talk today, the second for the Local Chairman's file, with the third copy to go to Claimant Holmes himself if you decide he should have one."
(Emphasis supplied)

Further evidence that the payment for the sixty days was a full and complete settlement of the Claim in this dispute is Carrier's un rebutted assertion that Claimant received no credit toward his apprenticeship for the sixty day period of suspension for which he ultimately received payment of wages.

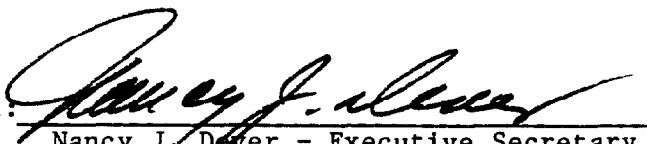
The Board finds that there is sufficient, credible evidence that a settlement agreement was reached between the parties in which the Claimant received payment for sixty days lost wages in consideration for a full and final settlement of his contested suspension from service in 1981, including the instant Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of June 1986.