

CONCURRING AND DISSENTING OPINION
OF
THE CARRIER MEMBERS
TO
AWARD 11593 (DOCKET 11498)
REFEREE MILLER

We concur with the merits finding of the Majority that the Claimant "was under instruction to comply with reasonable, special notification requirements" and that he "did not comply with those instructions...."

However, we must strongly dissent to that portion of the Award that holds that Claimant's voluntary action in executing a release in exchange for certain consideration did not constitute:

"....full settlement and release of any and all claims of any nature, known or unknown, which I have or might have against said Railway Company...." (Emphasis added).

The Railway Labor Act permits individuals to settle their own claims. That right is something that neither the Organization nor this Board, under the guise of contract interpretation, can abridge. We do not contest the Organization's right to pursue matters on behalf of its constituents, but when those matters have been disposed of there is nothing of substance for this Board to act upon. Here, the Majority has chosen to ignore the rights of the individual in order to perpetuate the perceived responsibility of the Organization when the Claimant himself removed any coloration of a dispute by his settlement. In Third Division Award 24869, involving similar circumstances, we find the following in dismissing the claim:

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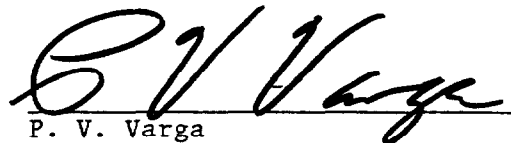
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"The question before us is not whether signing such a release of all labor claims in addition to a release for personal injury is in the Claimant's best interest; rather, it is did the Claimant execute the document as asserted by the Carrier. As we have indicated herein, the record supports the Carrier's position, and this Board finds the record substantially establishes the Claimant did, on September 15, 1981, sign a release covering both his personal on-duty injury and all labor claims."

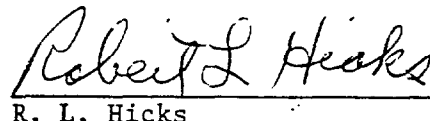
See also, Third Division Awards 22645, 25510, 26694, 26345, 20832 and 27043;
First Division Award 16675; Second Division Award 9875.

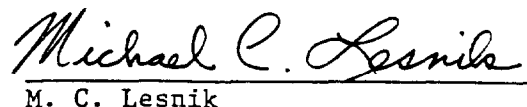
To conclude that a valid claim continued to exist after the matter was mutually settled, is both a misapplication of law, and settled principles of arbitration. It is also an unnecessary expenditure of funds and time by this Board.

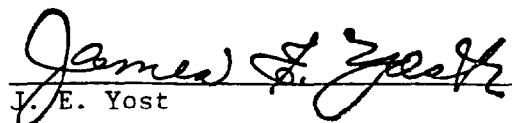
We Dissent.


P. V. Varga


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


J. E. Yost

The Second Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the controlling agreement, particularly Rules 40 and 26, when they arbitrarily assessed the personal record of Sheet Metal Worker A. L. Akins, Sr. thirty (30) demerits following investigation held on June 11, 1986, Cleburne, Texas.

2. That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to remove the thirty (30) demerits from Sheet Metal Worker Akins' personal record.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

On May 28, 1986, the Claimant was late reporting for work. Subsequently, Claimant was charged with violating various rules, and following an investigative hearing, was assigned thirty (30) demerits. The Organization contends that Claimant complied with Rule 26 when he called the Carrier to give notice that he would be late. The Carrier contends that Claimant failed to comply with specific instructions (contained in a letter, dated May 21, 1986) concerning who to contact to give notice of an absence and who could authorize such an absence.

Before dealing with the merits, two procedural issues must be addressed. First, the Carrier contends that this claim is moot because in the course of resigning voluntarily from employment with the Carrier, Claimant signed a "Release Form" to waive all claims against the Carrier. That release, however should not bar the Organization from going forward with the claim. The Organization has the right and the duty to police the Agreements

to which it is a party. The Organization must assure that individual settlements do not adversely affect collective rights. The Organization, as the collective representative, must retain the right to pursue the matter if it believes Claimant's waiver is wrong or improper. The duties of fair representation require the Organization to consider and to reconcile individual and collective interests. There is no evidence in this case that the Organization acted in an arbitrary or capricious or discriminatory manner by deciding to go forward with the appeal.

Second, there is no evidence in the record of this case that the multiple roles filled by Mr. Sanchez and Mr. Wooley denied Claimant any due process rights. The actual manner in which the investigative hearing was conducted provided Claimant a fair and impartial proceeding.

We find nothing improper on the part of the Carrier in requiring Claimant to adhere to a special notification and approval procedure. Claimant's record of absences, reporting late and leaving early justified the special procedure, and the special procedure is consistent with the language and intent of Rule 26. The Claimant's past record was properly introduced into the record as justification for the issuance of the special instructions. Similarly, the letter dated February 20, 1986, was properly introduced into the record to substantiate that Claimant had been warned about his absence record. The Claimant knew or should have known that he was expected to follow the special procedure for reporting in late (see point #4 of the letter date May 21, 1986). The Claimant did not follow that procedure on May 28th. The Claimant cannot be excused from this obligation because he left the letter containing the special instructions in his tool box at work. The Claimant was under instruction to comply with reasonable, special notification requirements. He did not comply with those instructions; it is not sufficient that he notified the Carrier in another manner.

There is no basis in the record for this Board to modify the discipline assigned.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October 1988.