

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13034
Docket No. 12968
96-2-94-2-125

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(International Brotherhood of Electrical
(Workers
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

- "1. That the Chicago and North Western Transportation Company, violated pertinent rules of the controlling agreement, effective December 1, 1985, in particular Rule 26, when they wrongfully placed Electrician Leon G. Marr on the discipline system and assessed him a five (5) day "actual suspension," after an investigation held on October 19, 1993.
2. That the Chicago and North Western Transportation Company be ordered to remove electrician Leon G. Marr from the Carrier's discipline system and that the five (5) day "actual suspension" issued October 29, 1993, be removed from his service record, and that the Carrier make him whole for all lost wages incurred, including time spent at the investigation, account of Carrier's most arbitrary and unjust action."

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 employee 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.

At the time this case arose, Claimant was employed as an electrician at the Chicago Passenger Terminal in Chicago, Illinois. On August 20, 1993, at or about 1:20 P.M., Claimant allegedly injured his left foot while stepping off a passenger coach. Claimant reported the injury to his foreman. The following day, an Accident Investigation Team attempted to reenact the Claimant's movements with conflicting results.

On September 13, 1993, Claimant was notified to attend an investigation into the incident. Following the investigation, Claimant was assessed a five-day suspension. That discipline was appealed and progressed in the usual manner. On June 4, 1994, Claimant signed a Release in connection with the incident at issue. That Release read in pertinent part as follows:

"For and in consideration of the sum of ... is hereby paid to me by the Chicago and North Western Transportation Company, receipt of which is hereby acknowledged, I, Leon G. Marr, do hereby release and forever discharge the Chicago and North Western Transportation Company, its officers, employees, agents and assigns from any and all claims, demands and liabilities of every kind and nature arising out of or in connection with my employment by the Transportation Company by reason of any and all personal, bodily and mental injuries sustained by me heretofore and to this date, including among other things, all injuries and damages sustained by me while employed by the Chicago and North Western Transportation Company at or near Chicago, Illinois, on or about August 20, 1993.

It is understood and agreed that the this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the parties hereby released, and that said releasees deny liability therefor and intend merely to avoid litigation and buy their peace.

* * *

I further declare that I have read this Release and understand that neither I, nor anyone on my behalf, can make any further claims against said Transportation Company, its officers, employees, agents, successors or assigns, and understand that I can not do so even though my injuries or damages are more serious or different from what I now know or understand them to be."

At the outset, the Carrier maintains that, in view of his signing of this release, Claimant has forfeited his right to pursue the instant claim. This Board is in agreement with Carrier's position. By the foregoing Release document, Claimant has released Carrier from "**any and all** claims, demands and liabilities of **every kind and nature** arising out of or in connection with my employment...." (Emphasis added). Absent some sort of limitation reserving to Claimant the right to pursue pending grievances, his release must be viewed to include the instant claim. (See, also, Third Division Awards 23932, 26345, and 19528.) Accordingly, the instant claim must be dismissed as moot.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.