

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13484

Docket No. 13377

00-2-98-2-64

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

(Brotherhood Railway Carmen Division

(Transportation Communications International Union

PARTIES TO DISPUTE:(

(CSX Transportation Inc. (former Baltimore & Ohio

(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. Claimant C. E. Earnest was not allowed to return to duty after his doctor released him. The Carrier's Medical Department held Claimant out of service until his restriction was removed. The Carrier's Medical Department allowed a junior employee, D. J. Johnson, to return to duty with numerous restrictions two months later.**
- 2. Carrier has demonstrated discriminatory actions toward their medical releases by allowing one employee to return to work with restrictions and not allowing all employees the same courtesy. Carrier's action deprived Claimant of work from July 22, 1997 through date of Thomas G. Cook. MD. letter to Claimant denying his return because he had restrictions on him until August 25, 1997 when the restrictions where (sic) removed and Claimant returned to work. We are claiming from July 22, 1997 until he returned to work on August 25, 1997 twenty-three (23) working days as time lost. This claim is filed under Rule 33 of the Controlling Agreement.”**

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 were given due notice of hearing thereon.

A claim was filed by the Local Chairman on behalf of the Claimant on September 19, 1997 on grounds that he was kept out of work for 23 days despite the fact that the Claimant's doctor had released him to return to work with light duty restrictions after he had an operation for carpal tunnel syndrome. According to the claim the Carrier had permitted another employee to return to work with restrictions and it should have permitted the Claimant to have done the same.

The claim was denied by the Carrier on grounds that the Claimant did indeed have physical restrictions imposed by his physician, whereas the other employee whom the Claimant references in his claim had respiratory ailments. According to the Carrier, the two "... medical conditions were not similar ..."

After a review of the full record the Board concludes that the instant claim should be dismissed. The record shows that on February 2, 1998 the Claimant unilaterally signed a Settlement Agreement with the Carrier that contained a provision whereby the Claimant released the Carrier of all outstanding claims. According to the terms of that Agreement, which included a sum not specified to the Board, the Claimant released the Carrier from:

"... all legal liability for personal injuries as set forth herein, including claims, causes of actions, actions, verdicts, judgments, or awards of money damages, costs, fees, and expenses incurred, and demands for monetary compensation of any nature. ..."

in connection with the Claimant's carpal tunnel syndrome. The Board has ruled on numerous occasions that a claim must be dismissed in the face of such a waiver. See First Division Award 24045; Second Division Award 13034 and Third Division Awards 20832, 26470, 26694, 32572 and 32573.

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 11th day of January, 2000.