

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13946
Docket No. 13805
NRAB-00002-060026
(06-2-26)

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Association of Machinists and Aerospace
Workers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Dispute – Claim of Employee:

That the Union Pacific Railroad Company (hereinafter referred to as Carrier or Company) violated the National Agreement dated September 1, 2005, between the International Association of Machinists and the Union Pacific Railroad Company when it refused to pay retroactive payments to Machinists S. Regaldo and P. Dinicola (hereinafter referred to as claimants) as required by side letter No. 2 of the National Agreement dated September 1, 1005.

Relief Requested:

That the Union Pacific Railroad Company be ordered to pay the retroactive payments to the Claimants as required by side letter No. 2 of the September 1, 2005 National 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.

After full consideration of all the facts and evidence at bar, the Board makes the following factual determination of the Organization's claim. As background, Claimant Regaldo signed a waiver of claims September 24, 2004. It is important to note that the release of claims contained exception for medical issues that might be "required with the next 3 months, 7 days" and some "future" medical expenses. It had no other exceptions and stated that the settlement was for "all claims of any kind or nature, arising out of my employment with Union Pacific Railroad Company . . ."

Similarly, Claimant Dinicola signed a release with an undisclosed sum of money to be paid to himself and his attorney to dismiss a lawsuit and in consideration of the settlement, agreed to a large number of conditions. One condition found by this Board is that "Dinicola further settles, compromises and forever acquits any and all claims, demands, actions, damages, costs, and compensation of any kind accruing as a result of Dinicola's employment with Union Pacific . . ." Claimant by his signature agreed on July 20, 2004 to this settlement.

Although both Claimants settled personal injury claims by those releases, they remained on the Carrier's seniority rosters for medical purposes.

Important to this dispute, the Organization and Carrier signed a National Agreement dated September 1, 2005. Side letter No. 2 to the National Agreement provides retroactive payments "to employees who . . . retired . . . subsequent to June 30, 2002", which includes both Claimants.

This dispute focuses upon the fact that the Carrier did not provide retroactive payments to these Claimants. By letter dated December 23, 2005, the Organization filed the instant claim alleging Carrier failure to provide retroactive payments as required by the National Agreement. The Organization argues forcefully before this Board that this, like vacation pay to retirees, “is money the claimants earned and are rightfully entitled to.” The Carrier has denied payment due to the argument that the Claimants have waived their rights to additional payments.

The Board has fully considered the above and finds that based on this record, the settlement agreement holds. The Claimants signed the settlement and although they made exceptions for medial issues and could have made other exceptions, their signed agreements are final. There is no exception for retroactive pay from a National Agreement that was being negotiated as far back as 1999 and came into existence nearly a year or more after they waived future claims against the Carrier.

We are in concurrence with the decision of Referee Suntrup (Third Division Award No. 32571 who stated:

“This Board has ruled on numerous occasions that a claim is moot in the face of such a waiver. See Third Division Awards 20832, 26470, 26694 and 29408. Also First division Award 24045 and Second Division Award 13034.”

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.

Form 1
Page 4

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 15th day of July 2008.