

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31776
Docket No. TD-32397
96-3-95-3-257

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"On May 6, 1994, T. Moore and R. DiFilippo were removed from service. Mr. Moore and Mr. DiFilippo both opted to sign waivers alternative to investigation and returned to work on May 16, 1994.

The discipline imposed by the company was: 30 days suspension time held out of service (10 days) to be considered time without pay, 20 days held in abeyance for six months, deferred under Rule 19, Paragraph F, with the understanding such discipline if (sic) final with no right of appeal.

Mr. Moore and Mr. DiFilippo both lost eight days pay while out of service. We do not wish to appeal the discipline. According to [Third Division] Docket #TD 29854 (J. Glassing award) which states if suspension is the discipline, it should be deferred. We wish to reclaim the wages for Mr. Moore and Mr. DiFilippo while they were out of service. Please inform us which pay period the[y] will be reimbursed for these lost wages."

FINDINGS:

The Third 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.

On May 5, 1994, Claimants were involved in an incident in which a train was improperly routed onto a section of track that was fouled by maintenance personnel. On May 6, 1994, Claimants were removed from service pending Investigation. Claimants were charged with violating NORAC Operating Rules 132 and 903. On May 16, 1994, each Claimant reached agreement with the Carrier to waive Investigation. Each Claimant signed a letter acknowledging his respective rule violation. Each letter continued:

“... consequently [I] accept discipline of ‘30 days suspension time held out of service (10 days) to be considered time without pay, 20 days held in abeyance for six months,’ deferred under Rule 19, paragraph F, with the understanding such discipline is final with no right of appeal.”

The Organization contends that Rule 19(F) as interpreted in Third Division Award 30071, prohibits the Carrier from suspending employees without pay unless the employee has had a prior deferred suspension within the preceding six months. The Organization urges that treating the ten days that each Claimant was withheld from service as an actual suspension violates Rule 19(F). The Organization maintains that the Claimants signed agreements which conflicted with Rule 19(F). It cites several Awards for the proposition that individual employees may not enter into agreements in conflict with the Agreement.

The Carrier contends that the Claimants agreed to the discipline imposed and waived their rights to appeal. The Carrier maintains that the agreements were made in accordance with Rule 30. The Carrier further argues that Award 30071 does not apply to the instant case and that it was wrongly decided and should not be followed.

The Board need go no further than the agreements waiving Investigation signed in this case. Each Claimant accepted responsibility for his Rule violation and agreed to the discipline imposed “with the understanding such discipline is final with no right of appeal.”

We are not persuaded by the Organization's contention that the agreements are of no force and effect because they are inconsistent with the Agreement. Rule 30 of the Agreement provides:

"An employee may be disciplined without an investigation when the involved employee and the authorized official of the Company agree in writing to the responsibility of the employee and the discipline to be imposed. Discipline imposed in accordance with this Rule is final with no rights of appeal."

The agreements waiving Investigation in the instant case were made in accordance with Rule 30. Under such circumstances, we should be extremely reluctant to set them aside. On their face, the agreements advised the Claimants that they were accepting the discipline imposed as final with no right of appeal. There is no evidence that the Claimants were affirmatively coerced or defrauded into signing the agreements.

Under these circumstances, were we to allow the type of collateral attack on the agreements that the Organization seeks to mount, we would undermine the finality that Rule 30 is intended to ensure. We will not do this. The claim will be denied.

AWARD

Claim denied.

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 Third Division**

Dated at Chicago, Illinois, this 20th day of November 1996.