

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32448
Docket No. MW-31700
98-3-93-3-734

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Seaboard Air Lines
(Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier withheld Mr. G. A. Black from service beginning October 20, 1992 and changed the effective date of the thirty (30) days of suspension imposed upon him from April 6, 1992 to October 23, 1992 [System File GAB-92-79/12(93-108) SSY].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. A. Black shall be compensated at his Group A, Class 1 Machine Operator's pro rata rate of pay for all wage loss suffered beginning October 20, 1992 and continuing until he is allowed to return to service."**

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.

Following an Investigation concerning the Claimant's operation of a Burro Crane and a consequent injury to himself, the Carrier issued a disciplinary letter reading in pertinent part as follows:

"As a result of your violation of CSX Safety Rule 366 as proven in the investigation, you will serve thirty (30) days actual suspension starting April 6, 1992 and will not bid or work on any boomed equipment for six (6) months from the end of your suspension. During the 6 month suspension from working the boomed equipment, you will attend a Safety Skill Seminar class on the Atlanta Division to improve your knowledge on boomed equipment."

A claim was initiated concerning this discipline. On September 8, 1992, Special Board of Adjustment No. 1037, Award 30 denied the claim. This Award referred to the Claimant as having been "assessed discipline of a thirty-day actual suspension starting April 6, 1992."

At the time of the investigative Hearing and extending beyond the date of the issuance of SBA No. 1037, Award 30, the Claimant was disabled from working based on his injury which had been the subject of the discipline. He was found physically qualified to return to duty on October 20, 1992. The Claimant was then advised that he would be required to serve the originally imposed 30-day suspension commencing October 23.

The Organization argues that this action improperly changed the terms of the disciplinary action which stated the Claimant would be subject to a suspension "starting April 6, 1992." In response, the Carrier states that the purpose of a "suspension" would be ineffective if it were not served at a time when the employee was available for work.

As a preliminary matter, the Carrier finds the claim defective in that at no time during the on-property claim handling procedure did the Organization cite any Agreement provision allegedly violated by the Carrier. In its Submission, the Organization relies on Rule 39. Because this Rule was not mentioned in the on-property handling, the Carrier contends the Board may not give it consideration.

The Board agrees with the Carrier that citation of Rule 39 comes too late. This, however, does not invalidate the claim. The claim is simply that the Claimant was withheld from work for 30 days commencing October 23, 1992 without any reason and in direct rejection of the terms of the disciplinary action.

As argued by the Organization, the Carrier was fully aware that the Claimant was disabled at the time the discipline was imposed, following the investigative Hearing. The Carrier relies on the use of the word "actual" in reference to the suspension, but this cannot erase the inclusion of the April 6 date. The Carrier's discipline notice could well have imposed a suspension to be served commencing with the Claimant's recovery and physical qualification for work. It did not do so. The suspension was imposed "starting April 6, 1992." In the absence of any possible ambiguity in this instruction, the Board has no basis to speculate on the reason for the selection of the April 6 date.

The claim will be sustained. For clarity, however, the imposition of a 30-day disciplinary suspension remains on the Claimant's record.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of January 1998.