

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32571

Docket No. MW-33672

98-3-97-3-141

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

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman J. G. Galan for his alleged insubordination when he did not report for a physical examination on April 10, 1995 was without just and sufficient cause and based on an unproven charge (System File MW-4239-D).
- (2) As a consequence of the aforesaid violation, Trackman J. G. Galan shall now be reinstated with seniority and all other benefits and he shall be compensated for all wage loss suffered."

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.

The Claimant, J. G. Galan, sustained an occupational injury on October 31, 1994 and was off duty thereafter. The Claimant was compensated by the Carrier under its Temporary Wage Continuation Program while off duty due to the injury. This compensation was paid from October 31, 1994 through March 14, 1995. On April 4, 1995 the Claimant's Orthopedic Physician and Surgeon, Alberto E. Rodriguez MD, informed the Carrier that the Claimant could return to light duty on February 20, 1995 and to full duty on March 6, 1995.

In accordance with Carrier policy the Claimant was scheduled for a follow-up medical evaluation at the Ingalls Health System in Calumet, Illinois. The Claimant was notified by letter dated April 4, 1995 to appear for this evaluation. The letter was sent to the Claimant's address on file.

The Claimant did not appear for the medical evaluation as directed. Subsequently he was sent a notice of Investigation under date of April 12, 1995. He was charged with insubordination for failure to follow directions found in the April 4, 1995 letter which had been sent to him. After postponements the Investigation was held on November 27, 1995. Thereafter, on December 13, 1995 the Claimant was advised that he had been found guilty as charged and he was discharged from service.

This discipline was appealed by the Organization under Section 3 of the Railway Labor Act and the operant Agreement and the claim was conferred on property. In view of the Claimant's long tenure with the railroad, with no prior discipline, the Carrier offered to return the Claimant to service on leniency basis "... with time held out of service to apply as a suspension. . . ."

Thereafter, however, the Claimant signed a General Release waiving all "... claims, demands and actions. . . ." which had been initiated against the Carrier, including the instant claim before this Board. The Claimant signed this release in return for a sum of money not specified herein by this Board.

After reviewing the full record on this claim the Board concludes that the claim has no viability in view of the March 21, 1997 Settlement Agreement signed by the Claimant.

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.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 29th day of April 1998.