

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32572
Docket No. SG-33739
98-3-97-3-207

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (C&O):

Claim on behalf of R. T. Martin for reinstatement to service with payment for all lost time and benefits and for his record to be cleared of all charges in connection with this discipline, account Carrier violated the current Signalmen's Agreement, particularly Rule 55, when it failed to provide the Claimant with a fair and impartial investigation and imposed the harsh and excessive discipline of dismissal from service against the Claimant without meeting the burden of proving its charges in connection with an investigation conducted on March 11, 1996. Carrier's File No. 15(96-110). General Chairman's File No. 96-29-CD. BRS File Case No. 10179-C&O."

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 February 26, 1996 the Claimant was advised to attend an Investigation to determine facts and place responsibility, if any, in connection with his failure to comply with CSX and FRA tests and inspections requirements on his territory. He was specifically charged with failure to comply with:

“CSX test # 31 & FRA rules 234.239 through 234.271
CSX test # 8 & FRA rule 236.107(a)
CSX test # 17 & FRA rule 236.382
CSX test # 3,4,17,18 & 20 & FRA rules 236.103, 236.104, 236.383, 236.386
CSX test # 2.0 & FRA rule 236.102(b)
CSX test # 30 & FRA rule 234.251”

The Claimant was held out of service pending results of the Investigation.

After the Investigation was held on March 11, 1996 at the office of Signal Supervisor H. D. Baker at South Portsmouth, Kentucky, the Claimant was advised that he had been found guilty as charged. As a result he was advised that his employment with CSX Transportation was terminated.

The discipline was appealed by the Organization in the normal manner up to and including the highest Carrier Officer designated to hear such. Absent settlement of this claim on property it was docketed before the Third Division for final adjudication.

After reviewing the full record on this claim the Board is forced to conclude that the claim has no viability in view of the May 7, 1997 Settlement Agreement unilaterally signed by the Claimant with the Carrier which contained a release of all claims provision. According to the terms of that Agreement, which included a sum not specified to the Board, the Claimant:

“... agree(d) not to return to work for CSXT in any capacity whatsoever . . . (and to) . . . the release of any and all outstanding labor claims which (he) may or may not have against CSXT. . . .”

The Board has ruled on numerous occasions that a claim is moot in the face of such a waiver. See Third Division Awards 20832, 26470 and 26694. 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.