

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34062
Docket No. CL-34809
00-3-98-3-406

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (AMTRAK))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12064) that:

The following Claim is hereby presented to the Carrier on behalf of Claimant Marita Carter:

(a) The Carrier violated the Family and Medical Leave Act effective February 5, 1994, enacted by Congress in 1993, when after Claimant was officially granted this leave, the Carrier permits and allows the Manager of Material Control, John Brawley, to continually harass Claimant due to her absences under FMLA on a daily basis, threatening abolishment of her job in addition to making continuous remarks to others regarding Claimant, in the Material Control Department at the Beech Grove Amtrak Facility. Local Labor Relations has already been notified of these activities, but they still continue.

(b) Claimant M. Carter now be allowed eight (8) hours pay at the punitive rate of her position for each and every day she has been off because of FMLA, which may be affected by her being constantly harassed, since she was granted FMLA on account of this violation.”

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 requested and was granted an FMLA leave (intermittent). In the midst of that intermittent leave, the Claimant filed the instant grievance alleging harassment, which she claimed was associated with the granting of her intermittent FMLA. A short time after filing the claim, the Claimant also filed a complaint with the U. S. Department of Labor, Wages and Hour Division of the Employment Standards Administration. On June 15, 1998, Carrier's Legal Department settled the Claimant's complaint with a payment of \$5,000. As part of that settlement, the Claimant signed a release that any possible Carrier liability for the alleged violation of her rights began on November 6, 1995 and ended on June 2, 1998.

In light of the foregoing the Claimant is estopped from pursuing this claim through the present forum.

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 25th day of May, 2000.