

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37065
Docket No. SG-36999
04-3-01-3-630**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Springfield Terminal Railway Company (STRC):

Claim on behalf of T. A. Merrigan, Jr. for payment of all lost time and benefits and for his personal record to clear of any reference to this matter. Account Carrier violated the current Signalmen’s Agreement, particularly Article 19, when on December 21, 2000 Carrier issued harsh and excessive discipline when it suspended the Claimant from service from January 10 through January 11, 2001. Carrier denied the Claimant the benefit of a fair and impartial hearing in connection with an investigation held on December 13, 2000. Carrier failed to meet its burden of proving the charges in this dispute. Carrier’s File No. S-01-01. BRS File Case No. 11779-STRC.”

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 in this case was employed as a Signal Maintainer. On June 14, 2000, while on duty and under pay, the Claimant sustained a personal injury during the performance of his regular assigned duties. As a result of this incident, the Claimant was notified on June 20, 2000, to attend a Hearing in connection with the June 14 incident. Following agreed-upon postponements, the Claimant appeared at the Hearing; indicated his willingness to proceed; was represented throughout the Hearing; was permitted to testify on his own behalf as well as to cross-examine witnesses who testified. Following completion of the Hearing, the Claimant was notified that he was found guilty as charged and was assessed a two day suspension.

The claim presently before the Board is the Organization's appeal of the two day suspension.

Subsequent to filing the Notice of Intent with the Board, the Claimant on July 15, 2002, signed a full release which, for payment of a stated sum of money, released the Carrier as follows:

"... from any and all claims, demands, damages, costs, expenses, loss of services, actions and causes of actions arising from any act or occurrence, up to the date of this Release, and particularly on account of any and all personal injuries, including but not limited to closed head injuries, neck injuries and psychological injuries, disability, property damage, loss of services and loss or damages of any kind sustained or that I hereafter may sustain in consequence of an accident that occurred on or about June 14, 2000, while I was employed as a signalman by the Springfield Terminal Railroad Company and engaged in my duties at the Hammond Ferry crossing

in Dixfield, Maine, all of the foregoing being the specific subject matter of a proceeding now before the Cumberland County Superior Court, to wit: Thomas A. Merrigan v. Springfield Terminal Railroad Company, Docket No. CV-01-210.”

On the basis of the case record as it exists, the Board has no recourse but to conclude that the claim as set forth in the Statement of Claim, supra, is now a settled issue. The broad language of the release signed by the Claimant on July 15, 2002, clearly encompasses this claim.

The Board's authority in matters of this type is well established. The Claimant is bound by his settlement and release. The claim before the Board is moot and barred from further consideration by the Board. Support for this principle can be found in Third Division Awards 33571 and 32291, including the Awards cited therein. Accordingly, the instant claim is dismissed with prejudice.

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 22nd day of June 2004.