

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19527
Docket Number MW-19482

Alfred H. Brent, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Chicago and Western Indiana Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, instead of calling and using Carpenter Don Basile for overtime service on December 28 and 31, 1969, it called and used junior Carpenter P. Jagielski (Carrier's file 323-MofW).

(2) Mr. Don Basile be allowed six and two-thirds (6-2/3) hours of pay at the carpenter's time and one-half rate because of the aforesaid violation.

OPINION OF BOARD: This opinion is dispositive of Dockets No. MW-19482, MW-19510 and MW-19568 and should appear and be incorporated in all three dockets by reference. In each of these three dockets Mr. Don Basile is the claimant and all three claims are based upon the fact that Carpenter Leader P. Jagielski was called out for overtime work when Don Basile was available. The Carrier's defense in each case was that the claimant was not qualified because the overtime work required leadership ability and the claimant had never done this particular work without supervision.

The record shows that long after these claims had been filed and handled up to the Carrier's highest officer on the property, the claimant personally, without the intervention of the Organization, entered into a general settlement agreement with the Carrier which contains the following broad release:

"It is also understood and agreed that the above payment is in full settlement and release of any and all claims of any kind which I have or might have against Chicago and Western Indiana Railroad Company, its proprietary, owning and using lines, including claims arising under the labor protective conditions contained in Appendix C-1 to the agreements, effective May 1, 1971, between Atchison, Topeka and Santa Fe Railway Company, Grand Trunk Western Railroad Company, Norfolk and Western Railway Company and National Railroad Passenger Corporation, and claims arising under any other agreement or statute affording me employment protection or covering the conditions of my employment."

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This Board has consistently recognized that an employee is bound by such a settlement and release, and that in the face of such a settlement and release the disputes coming thereunder are deemed to be adjusted and this Board has no jurisdiction. It is not necessary for the Board to deal with the substantive issue raised in these dockets as the issue has been made moot.

The Organization's claim that this jurisdictional defect was not raised when the matter was handled on the property is not controlling for this Board has held that jurisdictional issues can be raised for the first time at the Board level, or at any time whatever in the proceedings. (See Awards 8886 McMahon, 9189 Weston, 10956 Dolnick, 16786 Zumas).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The question of whether the Agreement was violated is moot.

A W A R D

The claim is **dismissed**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.