

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20247
Docket Number MW-20367

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
((Southern Pacific Transportation Company
((Pacific Lines)

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

(1) The Agreement was violated when B&B Paint Foreman J. Verdugo and Assistant B&B Paint Foreman K. Thompson were disciplined by suspension from service on October 6, 1972 prior to a hearing on the charge that they had failed to devote themselves to duty during their tour of duty and remain at their post of duty on July 24, 1972 (System File 011. 181 (V) (T)).

(2) The Agreement was further violated when the aforesaid two employees were dismissed from service on October 25, 1972 on the baseless, unsupported and disproven charge that they had failed to devote themselves to duty and remain at their post of duty during their tour of duty on July 24, 1972 - the occurrence being known to the Carrier on the date thereof.

(3) Claimants J. Verdugo and K. Thompson be compensated for all time loss from date of suspension to the date they are reinstated to service and restored to their rightful positions as Foreman and Assistant Foreman on B&B Gang #24, Los Angeles, California with seniority and vacation rights unimpaired.

OPINION OF BOARD: Claimants were charged on October 6, 1972 with failing to devote themselves to their duty on July 24, 1972 and with failure to remain at their post of duty during their duty tour on that date. On October 6th they were suspended from service pending the outcome of the investigation. On October 25, 1972, following the investigation, they were both found guilty and dismissed from service. Claimants, a Foreman and Assistant Foreman of an Extra Paint Gang, had been arrested on July 24, 1972 some 3½ miles from their regular duty point and were charged with sexual perversion. The criminal trial which had been postponed until late September was finally disposed of by both men pleading guilty to the lesser charge of criminal trespass and receiving a commensurate penalty.

Claimant Verdugo, the Foreman, had pending a personal liability claim with Carrier. In May of 1973, after this dispute was brought to the Board by letter of intent, the liability case was settled and the Organization wrote a letter to the Carrier on May 10, 1973 stating:

"I wish to advise that upon receipt of a letter from Mr. Verdugo requesting that his case be withdrawn from any further handling at the Third Division of the National Railroad Adjustment Board, his wishes will be complied with and same will be withdrawn."

Claimant wrote to the General Chairman advising him that he had settled the liability case with Carrier and directing the Organization to dismiss his action for reinstatement against Carrier.

The Board has held consistently that in the face of settlements such as that described above the disputes are deemed to be adjusted and the Board has no jurisdiction. See for example, Award 19527. In the instant case the Petitioner was party to the settlement on the property and hence the argument that the arrangement was contrary to the terms of the Agreement is incongruous and carries no weight.

With respect to Assistant Foreman Thompson, we are aware that he died during the processing of this dispute. Without regard to that event, an examination of the record of the investigation reveals that there was substantial evidence to support Carrier's conclusion of guilt. Had this Claimant survived we might well have considered some modification of the penalty imposed, but in view of the reality, that possibility is moot. We shall deny this claim.

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

That the Agreement was not violated.

A W A R D

Claimant Verdugo's Claim is dismissed for lack of jurisdiction.
Claimant Thompson's Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1974.