

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25678
Docket Number MW-25680

George S. Roukis, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(The Denver and Rio Grande Western Railroad Company

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

(1) Because of the injury sustained on September 10, 1982 while riding on a Carrier owned off-track vehicle, the Carrier should pay to Mr. D. E. Jacox the sum of \$150.00 per week beginning September 10, 1982 and to continue for 152 weeks or until Mr. Jacox is able to return to work (System File D-44-82/MW-2-83)."

OPINION OF BOARD: On September 10, 1982, a Friday, Claimant was regularly assigned and working as an operator of a Caterpillar 966 front end loader. At approximately 9:15 A.M., Claimant lost control of this equipment and sustained an injury which prevented his return to work within 30 days of the injury date. The Organization filed a Claim on November 2, 1982 wherein it asserted that he was entitled to the compensatory benefits under Article V of the February 10, 1971 National Agreement - Payment to Employees Injured Under Certain Conditions, and said Claim was denied by Carrier. It is the Organization's position that Claimant was riding in an off-track vehicle owned by Carrier during his regular working hours and, as such, was being transported at Carrier's expense. It maintains that none of the exceptions under this provision regarding the non payment of time loss benefits are applicable in this instance, and thus, the Claim is proper and valid. See Third Division Award Nos. 20693, 21705, 21567, et. al.

Carrier initially took the position that he was not deadheading under orders or being transported at the employer's expense, or importantly, riding in an off-track vehicle covered by Article V of the February 10, 1971 National Agreement. Later, it asserted the Claim was moot since Claimant on April 5, 1983 entered into a settlement agreement with Carrier whereby in consideration of the payment of \$30,000, he (Claimant) released and forever discharged Carrier from all Claims arising out of the aforesaid injury on September 2, 1982. It was Carrier's position that consistent with past rulings of the Third Division an employee's release and resignation renders a claim moot and accordingly, requested a dismissal award. See for example, Third Division Award Nos. 8886, 9189, 10956, 16786, 20832, 20967, et. al. In response to this argument, the Organization asserted that only it was legally responsible for determining grievance settlements, and requested a sustaining award under the authority of Third Division Award No. 20237, et. al.

In review of this case, we agree with Carrier's basic position that the Claim is moot. We have carefully analyzed the Third Division Awards dealing with similar procedural questions, and find that under the specific circumstances herein, Award No. 20832 is more persuasive. This determination

does not invalidate Award No. 20967 which was correct under the circumstances of its issuance, it merely finds that Claimant's unilateral settlement on April 5, 1983 did not affect the Organization's rights under Article V of the February, 1971 National Agreement.

On the other hand, and for purposes of public policy, this Board is compelled to point out that had we assessed the dispute on its merits, the Caterpillar 986 front end loader would have been considered an off-track vehicle under Article V of the February 10, 1971 National Agreement and the defining criteria established by Third Division Award Nos. 20693, 21567, 21705 and Award No. 26 of Public Law Board No. 2366. We believe it is important for us to note this observation since a corrected definitional framework should be of help in the future.

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

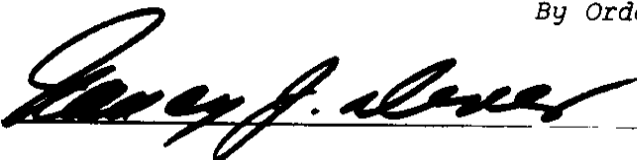
That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.