

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

PARTIES TO DISPUTE: (Larry Sanders
(
(The Long Island Rail Road Company

STATEMENT OF CLAIM:

"1. Does the National Railroad Adjustment Board have jurisdiction to decide the issues involved in this dispute.

2. Does the Long Island Railroad Company have a valid lien against the proceeds of a personal injury lawsuit which was settled with monies forthcoming only from a third-party."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

This is a companion case to Third Division Award 28217. In this case, Claimant as an individual filed an appeal of the decision of the Carrier that it was entitled to recoup from him the sum of \$115,427.34 as a lien against and/or assignment of damages recovered by Claimant in a lawsuit against Consolidated Edison Company. The details of that litigation and of previous handling of this Claim are set forth in Third Division Award 28217 and need not be repeated here.

Carrier asserts entitlement to these monies partly on the basis of an alleged "assignment" entered into by Claimant on February 9, 1983, and partly on the basis of Rule 76 in the Collective Bargaining Agreement between the Carrier and the Organization. We have no authority to decide the legality or enforceability of the alleged extra contractual assignment and therefore confine our jurisdiction solely to the question whether Carrier is entitled

under Rule 76, Sections 15, 21 or 22, to Claim part of the proceeds of Claimant's settlement with Consolidated Edison. The provisions of the Agreement pertinent to this case read as follows:

"APPENDIX 'B'

(RULE NO. 76)

Agreement entered into this 15th day of March, 1968, as amended, by and between the Long Island Railroad Company and its employees represented by the Brotherhood of Railroad Signalmen.

IT IS AGREED:

* * * * *

Section 15. Sick leave allowance will be granted employees absent from work while incapacitated by injury received in performance of duty and will not be charged against the sick leave allowable under this agreement. This section be subject to the provisions of Section 21 hereof.

* * * * *

Section 21. In the event that an employe commences any action or proceeding against the Carrier, on the basis of any alleged injury received in the performance of duty for which sick leave allowance hereunder has been paid by this Company then the Carrier shall have a lien against and is entitled to deduct from any recovery or settlement resulting from such action or proceeding up to the extent of the benefits so paid.

Section 22. In the event a dispute arises out of the application and/or interpretation of the terms of this agreement which cannot be resolved, it will be submitted to the Director of Personnel by the General Chairman."

Undisputed facts of record show that an FELA complaint by Claimant was filed against the Carrier but discontinued without cost, interest, disbursements or payment of any monies, as part of a stipulation in which ConEd paid Claimant a mid-trial settlement of \$850,000. The record shows that the Carrier paid nothing toward that settlement. The monies against which Carrier now seeks a lien were recovered from ConEd alone and were not the result of any action or proceeding against Carrier. Rather, the settlement resulted from the action or proceeding against Consolidated Edison, a third party not covered by the Collective Bargaining Agreement. In our judgment, to allow the Carrier a lien against these monies recovered in the action of proceeding against ConEd would be contrary to the express language and manifest intent of Rule 76, Section 21 of the Agreement.

The Carrier does not have a valid lien under Rule 76, Section 21 of the Collective Bargaining Agreement against the proceeds of Claimant's personal injury lawsuit against Consolidated Edison Company, which was settled with monies coming only from ConEd. This Board neither expresses nor implies any opinion regarding the so-called assignment of February 9, 1983. Item 2 of the Statement of Claim is answered in the negative.

A W A R D

Claim disposed of in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1989.