

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30026
Docket No. CL-30626
94-3-92-3-399

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Transportation Communications International
Union)
PARTIES TO DISPUTE: (
(Western Railroad Association

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood (GL-10809) that:

1. The Western Railroad Traffic Association violated Rules 2 and 23 among others, when S. Panfil was denied the opportunity to work overtime while granting it to a junior employee.
2. The Association shall therefore be required to compensate Ms. Panfil an amount equal to 8 hours from 1-29-91 to 2-1-91 and also 8 hours from 2-4-91 to 2-7-91 at a rate of \$22.36 per overtime hr."

FINDINGS:

The Second 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 employe 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 waived right of appearance at hearing thereon.

Before the Board may consider the merits of this matter, it is necessary to dispose of a procedural issue. Carrier notes that while Claimant's claim for compensation for missed overtime opportunities was being progressed on the property, she voluntarily resigned from Company's service and accepted one year's salary as a consideration. Carrier states that prior to opting for the separation payment the status of Claimant's overtime claim was specifically discussed and she was told that she would be waiving her rights to any recovery. Carrier points out that the release

executed accomplished this result. Accordingly, it is argued, Claimant's release extinguished any entitlements she may have had in this matter. In support of this notion, Carrier relies on Third Division Award 29134 involving the same parties, wherein an identical result was reached.

The Organization notes that precedent is available holding that the Union has a duty and the right to prosecute claims and grievances to protect the integrity of the agreement, irrespective of individual employee settlements. This duty and right protects the collective bargaining process, it is argued and is recognized in Third Division Award 20237, and the awards cited therein. The Organization also, notes that Award 2, PLB 3841, involving the same parties before the Board in this docket, required payment in the case of an employee resigning and waiving rights to various claims, etc., because the moneys owed were due under the self-executing provision of a rule or contract.

This Board finds Award 29134 to be applicable and controlling here. It involved the same parties that are before us in this docket, and a situation that closely parallels the one we are reviewing. We are unable to conclude that Award 29134 is in palpable error and it will be followed here.

In reaching this result, the Board is aware that it may appear that Award 29134 is at odds with Award 2, PLB 3841, also involving the same parties. Careful reading of Award 2, though, dispels this notion. Notwithstanding the conclusion stated in Award 2, Public Law Board No. 3841 indicated that it agreed:

"...that collective bargaining contracts have precedent over individual contracts when it is a question of a collective bargaining unit member (Third Division 18401, 19064, 20237 inter alia), that individuals under union contract may resign their positions without the concurrence of the labor organization (Second Division 4733), and that when an employee signed a waiver, upon resigning, that such employee 'waiv[es] all rights to any claims...due under any labor agreement (Third Division 25887)."

Third Division Award 25887, which is in harmony with a number of other Awards of all Divisions, held:

"The Organization contends that an employee cannot give away rights provided under the Agreement. In theory, the Board agrees with

this. However, giving away 'rights' and resigning from employment appear to be very different things. Claimant Schauer apparently left employment and signed a general waiver on a voluntary basis. There is no evidence that such waiver was for the purpose of undermining the principles of the Agreement. The waiver, in fact, appears to be a general release covering many things beyond the labor agreement. Under the terms of that waiver, Mr. Schauer ceased being Claimant Schauer."

Accordingly, in dismissing this claim the Board adopts the reasoning in Award 26345:

"This Board has no alternative but to conclude this specific release materially impacts upon our jurisdiction. See Third Division Awards 20832, 22645, 24869 and 25678. We subscribe to the view that if the language of the release supports a finding the release encompasses all claims, the employee is bound by the settlement and release. Accordingly, the Claim before us is moot and barred from our consideration."

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.