

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33023
Docket No. MW-34031
99-3-97-3-544

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [ten (10) day suspension] imposed upon Track Foreman K. R. Morgan for alleged failure to perform his duties safely and properly which resulted in an injury to his left thumb was arbitrary, capricious and on the basis of unproved charges [System File KRM-96-9635/12(96-0991) SSY].
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

It appears that in addition to the instant claim, the Claimant brought an FELA claim against the Carrier for the injury resulting from the incident that gave rise to the discipline. It further appears that the Claimant settled his FELA claim and signed a release waiving all claims. Accordingly, the instant claim must be dismissed.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 25th day of January 1999.