

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33162
Docket No. MW-32261
99-3-95-3-74**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to pay Mr. J. W. Jones the lump sum payment of \$4,000.00 to which he was entitled under the provisions of Article I, Section 1 of the July 28, 1992 Agreement (System Docket MW-3239.)**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall pay Mr. J. W. Jones the lump sum payment of \$4,000.00”**

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.

Subsequent to the Claimant's dismissal of May 26, 1992 the Carrier and the Organization entered into an agreement by which employees who qualified for an annual vacation in calendar year 1991 would receive \$4,000.00 provided that those employees had an employment relationship as of the date of the Agreement. In a separate agreement the parties further agreed that those employees who were dismissed as of the date of the Agreement would have their entitlement to the payment determined "... upon the final outcome of the dismissed employee's claim for reinstatement." On August 9, 1993 the Organization, the Carrier, and the Claimant agreed that he would be reinstated on a leniency basis. They further agreed that the agreement was "... in full, final and complete settlement of any and all claims J. W. Jones and the Union has, or may have, arising from the dismissal..." When the Carrier failed to pay the Claimant the \$4,000.00 payment in question the Organization pursued the matter until it is now before this Board for resolution.

We find that the parties' agreements as set forth above require that the claim be denied. Although one might argue that the Claimant had an "employment relationship" despite the fact that he was dismissed as of the date of the Agreement to pay the \$4,000.00 payment to those employees who were otherwise eligible, the parties themselves agreed that in those cases the employee's eligibility would be governed by the disposition of the challenge to the dismissal. Thus, we are constrained to look at the way in which the Claimant's challenge to his dismissal was resolved. When we do so we find that in return for reinstatement the Claimant agreed that reinstatement would be in "full, final and complete settlement of any and all claims ... arising from his dismissal." Thus, the only question is whether the claim to the \$4,000.00 payment arises from his dismissal. We find that it does. Clearly had the Claimant not been dismissed he would have been entitled to the payment. Thus, his dismissal placed the entitlement into dispute and the claim for the payment therefore arose from his dismissal. Because it does, and because the Claimant accepted reinstatement in lieu of this and other claims, the instant matter must be denied.

AWARD

Claim denied.

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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 March 1999.