

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34224
Docket No. SG-35171
00-3-99-3-41

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and Ohio
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of D. Jefferson for payment of lost time from September 9 to September 26, 1997, and to have the discipline assessed against him following an investigation on October 15, 1997, rescinded and for all reference to this matter to be removed from his record, account Carrier violated the current Signalman’s Agreement, particularly Rules 50 and 52, when it did not provide the Claimant with a fair and impartial investigation and assessed discipline against him without meeting the burden of proving the charges. Carrier’s File No. 15(97-262). BRS File Case No. 10862-B&O.”

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.

On August 1, 1997, the Claimant sustained an on-duty injury while in the process of unloading cable from his truck. He was given medical attention and returned to work after his rest days and a personal day. He worked until he was assessed by a Carrier physician on September 8, 1997 concerning complaints of back pain. He was placed on a 20-pound lifting restriction and was to receive physical therapy. The Claimant was taken out of service on September 9, 1997 due to these restrictions and released to return to work on September 26, 1997. During that period he was charged with failure to perform his duties properly and in a safe manner in connection with his August 1, 1997 injury. An Investigation was conducted on October 15, 1997, after which he was found guilty of the charge and issued a written reprimand. The instant claim protests that reprimand and requests lost wages in connection with being held out of service for reasons of the Investigation.

The claim before the Board is both for lost time between September 9 and 26, 1997 and to have the letter of reprimand removed from the Claimant's file. On the property, the Carrier argued that the Claimant suffered no lost time as a result of the discipline assessed against him, and was only out of service until he was able to work without medical restriction. Before the Board, the Carrier argues that the Board lacks jurisdiction to hear the merits of the instant claim, because the underlying matter was covered by the terms of a settlement signed by the Claimant on August 31, 1998.

A review of the record reveals the existence of a document entitled Settlement and Final Release of All Claims that was signed by the Claimant on August 31, 1998, and which, among other things, provides the Claimant with a cash settlement in exchange for a release of all claims and any matters relating to, or damages arising from, the accident on August 1, 1997 and any injury sustained therein. The Board is of the opinion that the instant claim falls squarely within the terms of that settlement because the discipline arose from the August 1, 1997 accident and any loss of earnings between September 9-26, 1997 were directly related to the injury sustained from that accident. Accordingly, the case is moot, and the Board has no jurisdiction to hear the underlying merits.

AWARD

Claim dismissed.

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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 23rd day of August, 2000.