

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42097
Docket No. MW-42366
15-3-NRAB-00003-130374**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier removed and disqualified Mr. V. Wallace from service and active employment in the ET Department on May 8, 2012 and when it continued to withhold him from such service until May 31, 2012 (System File NEC-BMWE-SD-5110 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant V. Wallace shall now ‘. . . be compensated all wage loss, (straight time, plus overtime) from May 8, 2012 until May 31, 2012. Additionally, Mr. Wallace be returned to his daylight position in Gang J-023 and that any/all loss of medical benefits be restored and he be made whole for his out of pocket medical expenses he incurred during the claim period.’”**

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 June 18, 2012, the Organization filed this claim asserting that the Carrier improperly disqualified the Claimant from service between May 8 and May 31, 2012. The Organization contends that the Carrier incorrectly determined that the Claimant failed a 24-month Electric Traction (ET) Lineman qualification test and that the joint review it requested of the disputed test question was unreasonably delayed causing an injustice as defined by Rule 75 – Other than Discipline. In a letter dated July 24, 2012, the Carrier denied the claim asserting, among other things, that the test question in dispute was reviewed and confirmed that the Claimant's answer was incorrect.

The claim was handled on the property in the usual and customary manner including placement before the highest officer of the Carrier designated to handle it. Following a conference discussion on December 20, 2012 and denial of the claim by the Carrier, the Organization filed a timely Notice of Intent with the Third Division. The claim is now properly before the Board for adjudication.

The Organization argues that the joint review of the examination on June 14, 2012 revealed that the Claimant answered the question correctly. Further, it asserts that the Carrier unreasonably delayed the joint review and the re-testing of the Claimant.

The Organization argues that the July 24, 2012 denial letter confirms that the test question was ambiguous. The Organization claims that the denial letter acknowledges that "a possible distraction can be perceived, is the fact that the word 'line' in the question is singular." It alleges that the Claimant answered the question correctly because he referred to only one "transmission line" in his answer and not two. This admission, claims the Organization, indicates that the Claimant did answer the question correctly on the qualification examination of May 7, 2012.

The Organization maintains that the Carrier caused an unreasonable delay of 34 days to hold a joint review of the test and of 19 days before the Claimant was

permitted to re-take the examination. The Organization asserts that, based on the incorrect determination by the Carrier regarding the test question in dispute and the unreasonable delays, the Claimant should not suffer a loss of pay for the period of time he was disqualified.

Conversely, the Carrier contends that the Claimant's Voluntary Waiver of Trial/Hearing and Appeal dated January 6, 2012, bars the claim. Further, it contends that the claim is procedurally defective because it was not submitted within the time limits contained in Rule 64 – Claims for Compensation – Time Limits for Filing and Rule 75.

As to the merits of the claim, the Carrier contends that the Claimant failed to accurately answer the question in dispute on two previous tests held on April 20 and May 7, 2012. The Carrier asserts that there can only be one correct answer and that both the initial determination and the joint review revealed that the Claimant's answer was inaccurate. The Carrier also states that its policy has been applied consistently and that it provides that employees disqualified for failing the test cannot be reinstated to their position until successfully passing the examination. The Claimant passed the test on May 30, 2012 and was permitted to return to service the next day.

In the final analysis, the Board finds that the claim is barred, in accordance with the Voluntary Waiver of Trial/Hearing and Appeal, dated January 6, 2012 (hereinafter referred to as the Waiver). The Carrier specifically addressed the Waiver language in its November 2, 2012 declination letter. According to the declination letter, the Claimant agreed in the Waiver that "no monetary claims or grievances will be submitted, granted and/or paid pursuant to the Amtrak-BMW Collective Bargaining Agreement in connection with any circumstances involved in, extended from, and/or associated with this case, and that the Carrier has no liability in that regard." There is no dispute in the record that the ET qualification test in dispute was related to the circumstances addressed by the Waiver.

There is ample Board precedent to support our conclusion here that waiver and release language voluntarily entered into by a claimant bars review of the merits of a claim. In Third Division Award 26345 the Board held:

“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.”

See also, Third Division Awards 33571, 37305 and 40256.

The language of the Waiver, cited by the Carrier, indicates that this matter falls within the scope of its terms. As a result, the instant claim is moot.

The Organization’s valiant and strenuous objection that the Waiver should not be presented to the Board because it was not produced on the property is rejected. The express language of the applicable provision of the Waiver was included in the declination letter from the Carrier on November 2, 2012 and was a defense raised during the handling of the matter on the property. There is nothing in the record that challenges the validity of the Carrier’s description of either the Waiver or of the existence of such a settlement agreement.

We also reject the Organization’s notion that notwithstanding its objection to the Carrier’s reliance on the Waiver. it has the ability to bring forth any claim on behalf of an employee covered by the terms and conditions of its Agreement where it finds – as it does here – that the Claimant was treated unfairly or unjustly. The claim here is for compensation for the period the Claimant was disqualified as a result of the 24-month ET examination he was required to take in compliance with the terms of his Waiver and, therefore, he is prohibited from receiving the remedy sought.

Based on the foregoing, none of the other procedural and substantive issues need be addressed. There is no need to look beyond the applicable language of the Waiver.

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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 13th day of July 2015.