

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20832
Docket **Number** CL-20858

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steam-
(ship Clerks, Freight Handlers, Express
(and Station Employes

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7602) that:

1. Carrier violated the Clerks' Agreement, in particular Rule 18, when it dismissed Mrs. Doris J. Held from its service (Carrier's **File** 280-754).

2. Carrier shall now be required to reinstate Mrs. Held to service with **all** rights unimpaired and compensate her for all **losses sustained** and the record of investigation be expunged **from** her personal record file.

OPINION OF BOARD: On July 6, 1973, **Claimant** was advised to report for an investigation. On July 23, 1973, after four (4) days of hearing, she was dismissed from **Carrier's service**. The Carrier's action was appealed in accordance with the procedural requirements of the Agreement, and on May 13, 1974, the Organization, on behalf of Claimant, submitted to this Board, an intention to file an Ex Parte Submission.

On June 26, 1974, this Division received an extensive Employee's Submission regarding this docket. On October 15, 1974, Carrier's Submission was received by this Division. **That document made** reference to, and appended, a copy of a September 9, 1974 "**Compromise Settlement and Full Release**", as follows:

"For the sole consideration of Thirty Thousand Dollars, which has been paid to me by the Missouri Pacific Railroad Company. I have released, and I hereby release the **Missouri Pacific Railroad Company**, and all of its **owners**, subsidiaries, agents and affiliates, from all liability to me, and from all claims by me, which arose or may arise out of or by **reason** of any event or occurrence prior to the date of this release; and I hereby **resign and** waive and relinquish any seniority and employment rights I may have with any of them. This release includes the release of all rights and

"claims that I **may** have against any of them under any collective bargaining agreement, the Railway Labor Act, the Federal Employers Liability Act, or any Civil Rights Act, or under any other law or contract, and the release of every claim I have made or might make in Civil Action No. 73-H-1053, in the U.S. District Court for the Southern District of Texas, or in any proceeding before the Equal Employment Opportunity **Commission** or any other government agency and it cancels every charge I have made against them with the Equal Employment Opportunity **Commission**, or any other government agency.

For the same consideration I agree to withdraw and cancel my pending claim or grievance seeking reinstatement and pay for time lost since my dismissal in 1973, and to withdraw and cancel my charges with the Equal Employment Opportunity **Commission** under the Civil Rights Act, and to arrange to have the said CA No. 73-H-1053 dismissed at my cost, with prejudice to my right to refile it; and to execute any further papers that may be appropriate in order to terminate **any** and all such claims or proceedings.

The Railroad has not agreed or promised to do or refrain from doing anything whatever, and no promise or representation by anyone influenced me in the signing of this release.

Signed at Houston, Texas, this 9 day of September, 1974.

(Signed) _____

Doris June Held

APPROVED:

Henry M. Rosenblum,
Her Attorney
Social Security **No. 515-24-4944 ."**

Carrier argues that the cited Settlement Agreement renders the dispute **moot** and accordingly, the Board lacks jurisdiction over the claim for relief. To the contrary, the Organization insists that the dispute was initiated by it (not the **Claimant**) and that it has progressed the claim through the various steps, and because the Organization was not a party to the Settlement, the claim is still actively before this Board for determination, and Claimant's individual action is **insufficient** to divest this Board of jurisdiction.

In this regard, the Organization has noted that the Settlement Agreement was not executed until four **(4)** months after submission of the notification of intention to submit an **Ex Parte** Submission and thus, it could not have been properly raised and considered while the matter was under review on the property. Accordingly, the Organization urges that we are precluded from considering the document. **We are** quite familiar with the concepts stated in the Awards cited by the Organization to support its contention, but feel that they are not controlling here. There is no question as to the authenticity of the document, and it does raise matters which are jurisdictional in nature. Jurisdictional issues may be raised, for the first time, at this Level. See Awards 19527, 19528 and 19530 and Awards cited therein.

There can be no question that if a Claimant's action (without concurrence by the Organization) can be a sufficient basis for divesting this Board of jurisdiction, such a conclusion would be the obvious result in this case. The Settlement and Release is full and complete; speaks in terms of **resignation**; and makes specific reference to the 1973 dismissal - **which** is the very basis of the claim in this docket. Thus, we conclude that the controlling issue is Limited to whether or not a Claimant may settle and compromise a claim, which has been instituted and progressed by the Organization, on behalf of the Claimant, and thereby divest this Board of jurisdiction.

Upon a thorough **review** of this record, we are of the view that Claimant's action has affected this Board's jurisdiction. In reaching this determination, we are not unmindful of Award 20237, relied upon by the Organization. In that dispute, an employee had been dismissed **from** service, and while the case was being appealed on the property by the Organization, the Claimant was returned to service pursuant to an arrangement between Claimant and Carrier in which the Organization was neither involved nor invited to participate. The Organization continued to press the matter, insisting that the settlement was not fatal to its right to vindicate violations of its Agreement.

The Board in Award 20237 stated its awareness **to** the divergent Awards and conflicting policy considerations on the question, and concluded:

"...**we** are convinced that the sounder principle is the one upholding the Organization's right, indeed its duty, to police the Agreements it has negotiated, irrespective of individual **employee** settlements. It appears **self-evident** that this principle is most **compelling** in cases such as the instant one where not just a monetary **claim** is at stake but alleged violations of the negotiated procedural safeguards surrounding the imposition of

"**employee** discipline. Accordingly, we hold that notwithstanding the purported settlement on the property, this claim is properly presented for consideration by the Board. See Awards 3416, 4461, 5793, 5834, 5924, 6324, **6958.**"

In support of its position, Carrier cites certain contrary Awards. In Awards 19527, 19528 and 19530, the Board considered disputes wherein, **long** after the claims had been handled up to the Carrier's highest officer on the property, the Claimant personally, without the intervention of the **Organization**, entered into a general settlement agreement and release. The Board concluded:

"This Board has consistently recognized that **an** employee is **bound** by such a settlement and release, and that in the face of such a settlement and release the disputes coming thereunder are deemed to be adjusted and this Board has no jurisdiction. It is not necessary for the Board to deal with the substantive issue raised in these dockets as the issue has been made moot."

Award No. 13 of Public Law Board No. 457 held:

"The Carrier has cited numerous awards of the First Division and several Special Board of Adjustment awards **all** holding that **individual** claimants may enter into waiver **agreements** of the type involved here without the consent or **even** the knowledge of his representative. These holdings are consistent with the generally accepted rule of Law holding that a party to a legal action or asserting a claim through an attorney may compromise that claim with the opposing party without the **consent** or approval of his attorney. **On** the basis of these authorities, it must be held that claimant executed a valid and binding waiver of his claim for **time** lost **and** this entire claim is now moot."

In **our** consideration of the conflicting authorities **and** divergent contentions, we have not ignored statutory Language and judicial determinations. In our review of the Railway Labor Act, as interpreted by the United States Supreme Court, we have noted that it surely cannot be asserted that individual **Grievants** are p-less or devoid of rights **regarding** grievances submitted and prosecuted on their behalf. Se.; for **example**, Czosek v. O'Mara, 397 U.S. 25, citing Elgin J. and E. R. Co. v Burley, 325 U.S.711.

Certainly, disputes such as this present highly significant considerations of serious import to both parties. Our Award is, of necessity, limited to this particular record before us. We do not dispute the conclusion of Award 20237 that an Organization has a **right** and a duty to police **its agreements**; and **surely a Claimant's** action in a given case does not constitute a binding precedent upon an Organization when the **Organization** is not a party to that action. But, we will not engage in Lengthy speculation of possible outcomes concerning facts and circumstances not now before us. Suffice it to say that under this record, the Board finds that the Claimant terminated the viability of the claim when she entered into the Compromise **Settle-**ment and Full Release cited above.

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

That the parties waived oral hearing;

That the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employes** within the meaning of the Railway Labor Act, as approved June **21**, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the question of Agreement violation is moot.

A W A R D

Claim dismissed.

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

ATTEST: *A. W. Paulson*
Executive Secretary

Dated at Chicago, **Illinois**, this 30th day of **September 1975**.