

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24869
Docket Number SG-24634

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Gulf Railroad:

On behalf of G. A. Peets, who was dismissed from his Signal Maintainer position at North Jackson, Mississippi, by letter dated July 27, 1981, for: restoration to his former position; all compensation lost which would have accrued to him had he not been dismissed; all benefits and seniority rights unimpaired; and the July 23, 1981 investigation and discipline to be stricken from his personal record and all other company records." (Carrier file: 135-296-17 Sp1 Case No. 385 Sig)

OPINION OF BOARD: The Claimant, G. A. Peets, is a Signal Maintainer with approximately seven and one-half years service with the Carrier at the time the dispute arose. On June 24, 1981, the Claimant did not come to work. As a result, a formal investigation was held on July 23 and, by letter dated July 27, 1981, the Claimant was informed of his dismissal for violation of Rule P. Between the absence of June 24 and the investigation of July 23, the Claimant sustained an on-duty injury which required surgery.

The Organization asserts the investigation was neither fair nor impartial. The Claimant was sick, and the Organization contends even if a Rule P violation occurred, the penalty of dismissal was inappropriate, excessive, and unreasonable.

The Carrier initially raises a procedural question which relates to alleged actions of Claimant subsequent to his dismissal. The Carrier contends that, on September 15, 1981, the Claimant signed a release relieving Carrier of any obligation in connection with the on-duty injury and any labor claims present or future. In consideration thereof, the Claimant received a sum of money.

The Organization argues the Claimant signed a release for the on-duty injury sustained on June 26, 1981. It is charged that the paragraph in that settlement, referring to labor claims, was typed in. The Organization characterizes the actions of the Carrier as "deceitful methods." The Organization asks that, if the release did relieve Carrier from all "labor" claims, why was it deemed necessary to attempt to have the Claimant sign a letter of resignation? The Organization also questions why the amounts of money to be paid were left blank. In view of this fact, the Organization asks if the Carrier submitted the release in its entirety.

This Board has examined the document in question and confirms that it is a pre-printed form which identifies the parties and the subject of the release. The reason given is "an incident" that occurred while in the employ of the ICGRRCo. at or near Jackson, Miss. on or about the 26th day of June, 1981." Thereafter, the pre-printed form contains a paragraph dealing with the Carrier's

authorization to withhold and pay specified parties, such as the IRS, etc. Next are listed seven items dealing with deductions for the amount apportioned for a variety of factors, such as lost time, Railroad Retirement tax, sickness benefits, advancements, and supplemental sick benefits. Item 7 is for the net, payable amount. The document does not disclose the amount of consideration paid to Claimant. Below Item 7 is approximately an inch and one-half of space which contains the following:

"As a consideration in this settlement, I, G. A. Peets, agree to dismiss any and all labor claims I have or may have in the future against the ICGRRCo."

This sentence is typed and below it and to the right is the Claimant's signature. Next follows a handwritten statement directly under the above quoted typed sentence which states:

"I have read and understand this is a final settlement and release."

Just under the statement and to the right is the Claimant's signature. Continuing, the document contains a printed general release which is witnessed and again signed by the Claimant. On January 21, 1982, the Claimant wrote to the General Chairman in response to a letter from him. In that letter, the Claimant acknowledges signing the document in question. With respect to the typed sentence, the Claimant states:

"It really doesn't seem legal that he could have amended the form to read as a release from employment too. Mr. Smith did not inform me that he was going to type this in."

This Board does not view the record as supporting that statement and its obvious implications. The document was executed in the presence of a notary public who kept a notarial record indicating the nature of the instrument was a "Final Settlement and Release" and "Dismissal of Labor Claim." The Board has laboriously described the document in question because the placement of the language in question, coupled with the Claimant's three signatures and the notary's record, belies his allegation the document was tampered with at a later date.

The question before us is not whether signing such a release of all labor claims in addition to a release for personal injury is in the Claimant's best interest; rather, it is did the Claimant execute the document as asserted by the Carrier. As we have indicated herein, the record supports the Carrier's position, and this Board finds the record substantially establishes the Claimant did, on September 15, 1981, sign a release covering both his personal on-duty injury and all labor claims.

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

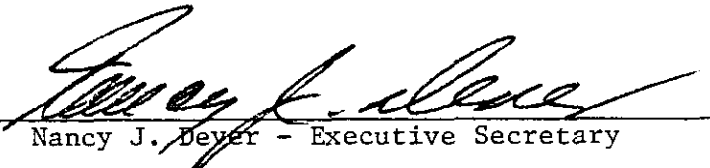
That the Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984.