

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24219
Docket No. R-43795
93-1-91-1-U-1657

The First Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

Claim of Engineer R. L. Robinson for re-instatement to service with pay for time lost after expiration of six (6) months out of service time."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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. Hearing was held.

Claimant was employed by the Carrier as an Engineer on the territory from North Little Rock to Van Buren, Arkansas.

On February 8, 1990, the Claimant noticed that a Brakeman needed assistance getting into a van that was to transport the crew to the yard office. During the ride, Claimant asked the Brakeman how he had injured himself. The Brakeman replied that he had hurt his knee while jumping a fence.

The members of the crew apparently decided that they would inform the Carrier that the Brakeman fell while on duty and on the Carrier property and they proceeded to give recorded statements to that effect to the Carrier Casualty Management representative.

During the course of an investigation of the injury, the Carrier learned that the Brakeman may not have been injured on the job and in fact there may have been a fraudulent claim made. Thereafter, the Carrier began interviewing the Claimant and the other crew members individually. The Claimant's story changed from what he told the Casualty Management representative.

As a result, the Claimant was charged as follows:

"...in connection with the report that on February 8, 1990, you withheld information and knowingly falsified reports and furnished false statements pertaining to a personal injury sustained by Brakeman which was alleged to have occurred on duty at about 2:45 a.m., February 8, 1990 at Van Buren, Arkansas, after reporting for duty for Train 2KCNL."

On February 23, 1990, the Claimant signed a waiver of his rights to a formal investigation regarding the above charge. By signing this waiver, he admitted to the charge and accepted dismissal.

The Organization contends that the Claimant, at the time that he signed the Waiver of Rights, was allegedly promised by the Superintendent that if the Claimant signed the waiver, he would be reinstated into service after six months. The Carrier denies any such promise.

The parties being unable to resolve this issue, this matter came before this Board. This Board has thoroughly reviewed the record in this case, and we find that the Organization has failed to present sufficient evidence that an oral Agreement was made on February 23, 1990, that amended the clear language set forth in the Acceptance of Discipline signed by the Claimant that same day.

The record reveals that on February 23, 1990, the Claimant, in writing, admitted that he falsely gave statements and written reports describing an injury to a fellow employee while he was on duty. The Claimant also admitted that the wrongdoing on his part violated General Rules A, B, and D, as well as Rules 607 (4), 607 (5), and 621. In that same document, which was witnessed by an

Organization representative, the Claimant "knowingly and voluntarily elect[ed] to waive [his] right to formal investigation on the charges preferred and accept ACTUAL DISMISSAL as discipline commensurate with the offense(s) effective 12:01 AM, February 16, 1990."

Although the Organization now argues that on the occasion of the execution of the above document, the Superintendent "offered to reinstate the Claimant . . . following the end of a six-month suspension . . ." and submits written statements in support of its position, the Board finds that those statements are not sufficient to overcome the effect of the written agreement, as well as the affidavits of the Carrier representatives.

The Carrier has submitted two sworn affidavits stating that although there was a statement made by the Carrier representative indicating that if the Claimant admitted his guilt that a "consideration" would be given for possible reinstatement in six months, there was no definite promise of a definite reinstatement ever made.

Since we have conflicting statements as to what occurred on February 23, 1990, other than the execution of the document that is in evidence, this case must turn on that written agreement signed that day by the Claimant and a Carrier and Organization representative. There is absolutely no ambiguity in that document. After reviewing that document, there is no reason to suspect that the parties had any additional agreement that was not incorporated in that written document.

Once a written document is entered into, it is assumed that all the agreements that were made by the parties were incorporated therein. There is insufficient evidence that there was an additional agreement such as the one that the Organization claims was also made that day but not committed to writing.

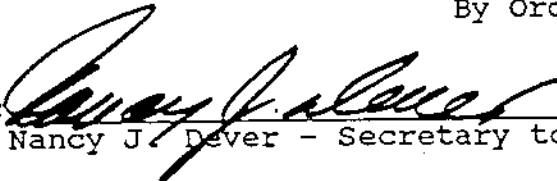
For reasons set forth above, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 14th day of May, 1993.