

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25300

Docket No. 44922

02-1-99-1-U-2134

The First Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claims of Conductor P. E. Partenheimer for removal of Level 1 and Level 2 discipline claiming all lost time (including time attending the investigation), and clearing these notations of discipline from Conductor Partenheimer’s record.”

FINDINGS:

The First 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.

Following a formal Investigation, the Claimant was issued a Level 1 discipline (Letter of Reprimand) for failure to protect assignments on various dates between October 1 and December 31, 1998. As the result of a second Investigation conducted the same day, the Claimant was issued a Level 2 discipline (one day off with pay) for the late reporting of an injury that occurred on December 27, 1998. The Organization appealed these two actions in separate claims, and they were separately denied by the Carrier. As is the custom between the parties, the Organization listed these two cases, along with

others, in a single letter requesting they be discussed in conference. After the conference, the Carrier issued its decision on the discussed cases in a single letter. Thereafter, the Organization filed its Notice of Intent with the Board, listing these two cases together. The Carrier objected to the combination of the two claims, and the Board declined to issue a preliminary procedural ruling on the issue. At Hearing before the Board, the Carrier renewed its objection.

While the Organization is correct that the Board favors the combination of like claims as a means of economically utilizing the limited resources available to it, such a policy has not been extended to dissimilar claims. None of the numerous Awards cited by the Organization involves a case where an employee has been disciplined on two totally distinct charges. The discipline cases cited involve either two employees on the same crew (First Division Award 24973), two employees issued identical discipline for identical infractions (First Division Award 24358), or one employee disciplined twice for identical offenses (First Division Award 24847).¹ It is not sufficient that both cases involve the same employee, nor that both investigations were conducted on the same day. The consideration of both cases during the same conference session, and their subsequent denial in a single letter, along with other cases, does not constitute an acceptance by the Carrier of the combination of the two claims. Finally, the fact that the Organization raises common procedural arguments is also not sufficient to join these two cases. If the Board were to reach the merits of the disciplines, it would have to make distinct determinations on each of the records, without one being a factor in our consideration of the other.

In First Division Award 25212, involving these same parties, the Board held:

“At the outset, the Carrier took exception to the unilateral consolidation or bundling of these individual factually distinct claims for presentation as a single dispute to the First Division. It is not unprecedented for this Division and other Board tribunals to permit the combination of separate but factually linked claims into a single contract interpretation dispute, in

¹In Award 24358, the Board noted that the cases were combined “as the facts and issues in both disputes are similar.” In the other two cases, there is no indication either party objected to the combination of the claims. In fact, without the full record before us, it is not possible for the Board to determine that these cases were not unified during the handling on the property.

the interests of administrative efficiency and economy. See, First Division Award 24530 and Third Division Award 31456. On the other hand, the Board has also warned that inappropriate combinations of factually diverse and/or unrelated claims will result in dismissal for failure to handle the disputes in the 'usual manner,' as envisioned by the Railway Labor Act and the Rules of the Board. See, Third Division Award 33016.

In our considered judgement, the block of cases presented in this matter falls into the latter category because it would necessitate ten separate findings of fact before the Board could reach the point of applying the largely uncontested Agreement language. This Board has resisted an 'always/never' boilerplate analysis of these kinds of cases. Rather than being administratively efficient and economical to handle such cases in a bloc, it is manifest that these 'present and available' types of cases are sui generis in that each turns on application of Agreement language to a particular set of facts and circumstances. Based upon all of the foregoing, the Board shall grant the Carrier's motion to dismiss these claims on jurisdictional/procedural grounds without further comment on the underlying merits."

Consistent with the Board's decision in Award 25212, we must dismiss this claim without consideration of the merits of the disciplinary actions.

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 First Division

Dated at Chicago, Illinois, this 25th day of February, 2002.