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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35500
Docket No. TD-34497
01-3-98-3-138

The Third Division consisted of the regular members and in addition Referee Donald W. Cohen when award was rendered.

(American Train Dispatchers Department/
(International Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Please accept this claim filed in behalf of Train Dispatcher J. Egan, for one day's pay at the pro-rata for Train Dispatcher for each of the following dates:

November 23, 14, 25, 26, 27, 30 and December 1, 1996.

Mr. Egan was removed from service following an incident on November 20, 1996, in which a train got under cold wire on the Harrisburg Line. Following the incident, Mr. Egan was held off his regularly assigned position until December 2, 1996, ostensibly for drug test results, and then for reasons unknown.

Amtrak made no showing that Mr. Egan was detrimental to himself, another person or the Corporation. Mr. Egan has also had not, within the preceding six months, committed an offense for which (deferred) suspension was assessed. Therefore, Amtrak must have held Mr. Egan off his position for causes other than those dealt with in Rule 19 - DISCIPLINE - INVESTIGATION - APPEAL."

FINDINGS:

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

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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.

The Claimant was removed from service on November 23 to December 1, 1996 as a result of an incident which occurred on November 21, 1996. On December 2, 1996, the Claimant signed a waiver letter accepting a 30-day suspension with no right of appeal. The Carrier contends that Egan was removed from service during the period at issue out of safety concerns and that these are not elements of the suspension. The Carrier continues by claiming that the provisions of Rule 30 stand-alone and are not modified by the provisions of Rule 19 as alleged by the Organization.

The Organization contends that the settlement under Rule 30 is intended to be all-inclusive meaning that the Claimant must be paid for all days off from November 23 through December 1, 1996. The Organization further contends the Carrier did not have cause to withhold the Claimant from his job.

The Carrier claims that the waiver signed by the Claimant constitutes an entire settlement with no right of appeal. The Carrier contends that the time off prior to the waiver period can be characterized as "lost time" or "non-time." The Carrier closed by contending it's right to withhold the Claimant from service because "his retention in service could be detrimental to himself, another person or the Corporation."

The record supports the position of the Carrier that it had the right to withhold the Claimant from service. The resolution of this question however does not impact upon the final determination in this case.

In support of its position, the Organization relies upon Third Division Award 30071, dealing with a situation where an employee was given a 30-day suspension, to which the Carrier applied time held out of service. The determination was that an employee assessed a suspension under Rule 19(f), will not serve any time off unless another offense is committed within the succeeding six-month period. The decision concluded by stating

that the "Carrier may not include actual days out of service without pay in a suspension assessed under the provisions of rule 19(f)."

The Carrier relies upon the following cases: Third Division Awards 29590, 31776, 32987 and 32988. The first Award dealt with an appeal of a ten-day suspension, the right of the Carrier to withhold an employee from service, and whether the Carrier gave the Claimant five days notice of the charge against her. It does not deal with the issue before us in this case.

Award 31776 dealt with a situation wherein claimants knowingly signed for a 30-day suspension including time held out of service. This case serves to demonstrate an alternative approach to Rule 30. In the instant case, the parties did not include the time off in the settlement Agreement, leading to the conclusion that the Claimant did not intend to accept both a 30-day suspension and lose pay for the time off.

Awards 32987 and 32988 concluded that investigation time off could be unpaid as a portion of a disciplinary suspension. These cases do not deal with a fact situation as presented here.

Rules 19 and 30 are closely related and must be construed together. The parties did not reference the Investigation time off in the settlement and the Claimant is accordingly entitled to pay for such period.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of June, 2001.