

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13842
Docket No. 13738
05-2-04-2-21

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division of TCU
(Texas Mexican Railway Company)

STATEMENT OF CLAIM:

- “1 That the Texas Mexican Railway Company violated Rule 14 of the Texas Mexican Railway Company Controlling Agreement September 1, 1949 when they arbitrarily, unjustly and capriciously withheld Carman Norberto De La Garza, III hereinafter referred to as the Claimant, from service on August 21, 2003 as a result of investigation held on August 14, 2003.
2. That the Texas Mexican Railway Company be ordered to compensate Carman Norberto DeLaGarza, III as follows:

 - a. Returned to service with seniority rights unimpaired.
 - b. Made whole for all vacation rights.
 - c. Made whole for all pension benefits, including railroad retirement and unemployment insurance.
 - d. Made whole for all health, welfare and insurance benefits.
 - e. Pay for all time lost, including time lost for holiday pay and all other compensation for all overtime pay that he would have received from August 21, 2003 until returned to service.”

FINDINGS:

The Second 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.

The Board finds the instant case moot due to a settlement including a release in full of all Claims, which specifically applies to this instant dispute. In the settlement signed by the Claimant, he agreed that:

“It is fully understood that this release covers not only all claims asserted in said cause, but any and all other claims and causes of action which [Claimant] has or may have against the parties hereby released whether or not arising out of said incident . . .”

As the parties to the Release of all claims were the Texas Mexican Railway Company and the Claimant, Norberto De La Garza, the Board has no alternative, but to dismiss the Claim.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 1st day of April 2005.