

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
that:

(1) The dismissal of Track Laborer J. C. Juarez for alleged violation of Safety Rules 565 and 566 on December 12, 1985, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File BN-86-04/10 DI - J. C. Juarez).

(2) The claimant shall be reinstated with all rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third 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 employes 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 waived right of appearance at hearing thereon.

Claimant was a track laborer with approximately eight years of service with the Carrier at the time the dispute arose. On December 12, 1985, Claimant was the driver of BN Vehicle No. 2095. At approximately 3:15 P.M. on this date, Claimant was involved in a one-vehicle accident that resulted in damage to the vehicle.

As a result of this incident, Claimant was requested, and did submit, to a drug screen which showed positive reading for cannabinoids. After this result was confirmed, Claimant was charged with a violation of Rules 565 and 566. Claimant was advised by letter dated January 10, 1986, of his dismissal. The matter was pursued on the property and was noticed to this Board by the Organization's letter of February 4, 1987.

However, we need not examine the several arguments of the parties because the Claimant, on August 8, 1986, executed a release:

"....arising out of accident on or about December 12, 1985, at or near Wendover, Wyoming, while I was employed as a Grinder Operator, and arising out of any other accidents, at any time or place, while I was in the service of said Company, up to the date of this release. It is understood that in further consideration of this settlement, I hereby resign from service of said Company, and release said Company from all claims in connection with seniority or employment rights; and I agree I shall not present myself or seek employment or re-employment with Burlington Northern Railroad in the future. It is also agreed and understood that this release includes a release of any claim to work or for monetary recovery which may arise under laws pertaining to discrimination in employment or possible pending reinstatement actions as a result of discipline."
(Emphasis added)

The language "....pending reinstatement actions as a result of discipline" obviously includes the present dispute. As was stated in Second Division Award 9875:

"....the Courts, as well as the National Railroad Adjustment Board, have consistently held that under the Act, an employee may settle his own claims and grievances: (Public Law Board No. 2986, see also Estes v. Union Terminal Company, 89 F.2d. 768; Brotherhood of Locomotive Engineers v. Denver and Rio Grande RR Co., 411 F.2d. 2.1115; Elgin J. and E.R. Co. v. Burley, 325 US 711; First Division Awards 7473, 7166, 10145; and Third Division Awards 19527, 20247, 20832)."

And in recent Third Division Award 26694, it was stated:

"The Board has been present with a release executed by the Claimant on May 26, 1987, which fully releases the Carrier from any and all Claims, causes of action, and liabilities of any kind or nature arising out of his employment with the Carrier. Hence, given that the Claimant has fully released the Carrier from all liability, there is nothing for this Board to decide, and the Claim is hereby dismissed."

A W A R D

Claim dismissed.


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Award No. 27043
Docket No. MW-27652
88-3-87-3-110

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

Attest:


Nancy J. Deter - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.