

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

(Boris L. Merrick
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"Of violating rules 1, 2, 5, 9, 19, and 62 of the Agreement between Burlington Northern Railroad Company and its employees represented by the Brotherhood of Maintenance of Way Employees."

FINDINGS:

The Third 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 employees 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 herein had been on furlough for over ninety days. He was recalled to a Carpenter's position and on August 20, 1985 was instructed to appear for a return-to-work physical examination. For unknown reasons he did not appear for the physical examination until September 20, 1985. He was cleared to return to work and did so on September 23, 1985. Claimant worked for one week as a Carpenter and then assumed the position of a truck driver on September 30, 1985. A Claim was filed on behalf of Claimant by his Local Chairman on October 20, 1985. That Claim was for pay for the period from August 26 until September 30, 1985, since it was alleged that an employee with no seniority as a truck driver drove such a vehicle during the period in question and it is alleged that Claimant should have been called back for that assignment. The Claim on the property was withdrawn without prejudice by the Organization by letter dated April 20, 1987.

This Board cannot address the merits involved in this dispute in view of the circumstances surrounding the disposition of the dispute during the handling on the property. The Organization's General Chairman is the statutory representative of all employees on this property represented by the Brotherhood of Maintenance of Way Employees. In that capacity he has the right to file claims on behalf of such employees and handle those claims to a conclusion. Included in his handling of claims is the right to withdraw such claims if he chooses. In this instance it appears that the General Chairman found that Claimant had not appeared for his physical examination during the Claim period and therefore concluded that the Claim should be withdrawn. This Board has no authority to overrule an agreement made between the Organization and the Carrier, in this instance an agreement to withdraw the Claim. Hence, the Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1990.