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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32879
Docket No. MS-32458
98-3-95-3-374**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Ronnie L. Boyd
PARTIES TO DISPUTE: (
(Burlington Northern Railroad**

STATEMENT OF CLAIM:

"Re: System File B-2303-3/MWC 94-08-23AA

The above-mentioned file concerns the dismissal of myself Ronnie L. Boyd in connection with an injury that I sustained on March 23, 1994. It was also mentioned that an investigation was held on April 17, 1994, in which I was not able to attend. It was presented at that investigation that I was in violation of Rule 40, 563, 564, 567, and 585.

- Rule #40 concerns lifting and carrying**
- Rule #563 pertains to the unsafe discharge of duty**
- Rule #564 pertains to carelessness, of a person's own safety**
- Rule #567 exercises of care to prevent injury**
- Rule #574, which concerns withholding information**
- Rule #585 concerns all accidents must be reported as soon as possible.**

... all of these allegations are untrue and I feel that I have not been given a chance to vindicate myself."

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 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.

Claimant was working as a Carpenter on B&B Gang 805 headquartered at Sherman, Texas, on March 23, 1994. The record reveals that he completed a First Aid Log report indicating that he had injured his back while pulling ties with tie tongs earlier that morning. Claimant was taken to the hospital where he received x-rays, various prescriptions and a note to remain off work for three days.

Thereafter, Carrier dismissed Claimant on charges that his March 23, 1994 injury and eight previous work injuries were the result of unsafe work practices in violation of various Carrier Rules. The Organization requested that an Investigation be conducted, and a Hearing was scheduled for April 18, 1994. Despite three attempts to notify the Claimant of the Hearing, he did not attend due, apparently, to his being out of town. The Organization was in attendance and represented Claimant at the Hearing, where the facts of the March 23, 1994 injury and his prior injury record were detailed.

Without going into the arguments presented by the parties, the Board has been made aware of a settlement agreement entered into between the Claimant and Carrier which, in part, releases Carrier from "all claims and liabilities of every kind or nature," and acknowledges that the injuries sustained by Claimant prevent him from returning to work for Carrier, and includes a waiver and release from "any claim for present or future reinstatement." Since any remedy concerning Claimant's protest of his dismissal in this case appears to be encompassed within the settlement and release executed by the parties, we are obliged to dismiss this claim.

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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 Third Division**

Dated at Chicago, Illinois, this 21st day of October 1998.