

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 33647  
Docket No. CL-33922  
99-3-97-3-416

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

(Transportation Communications International Union  
**PARTIES TO DISPUTE:** (  
( Burlington Northern Santa Fe Railroad

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL-11772) that:

1. Carrier declined a request dated January 30, 1995 of Ms. B.R. VanZuiden for pay for unused 1994 sick leave.
2. Carrier must now compensate Ms. VanZuiden \$481.00.”

**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 and other employees of the Carrier were notified that their positions were going to be transferred from Denver, Colorado, to Ft. Worth, Texas, but that it was not anticipated that any of the positions in question would be abolished. While the transfer process was pending, the Claimant submitted a request on January 30, 1995, for sick days under Rule 55G. Subsequently, the Carrier and the Organization met and

reached an Agreement with regard to those positions, including that of the Claimant, that provided that certain positions would be abolished, but that employees in those positions could obtain a separation allowance.

So notified, the Claimant chose the separation allowance and, on February 27, 1995 executed a document whereby she released the Carrier from "...any and all...claims arising out of or pertaining to my employment with and by..." the Carrier. However, in doing so, the Claimant amended the document by inserting the following language: "Was assured by Ernie Rangel before signing that...specifically buy-back days would be paid separately from separation allowance." With that notation, Rangel also signed the document.

Thereafter, the Carrier refused to buy back the Claimant's sick days and this claim ensued.

The Carrier argues that the claim must be denied because the Claimant released it from any claims that she had or might have had at the time that she chose to separate her employment with the Carrier. It adds that if she did indeed wish to receive the buy back pay for her sick days she could have chosen to reject the separation allowance, with its accompanying release, and continue to work for the Carrier thereby continuing her claim to the sick days in question.

The Carrier would be correct in all regards, but for one important consideration. The Claimant chose another route, that is, she chose to amend the release to preserve her claim to the sick days. More importantly, Rangel, a Carrier representative with apparent authority, joined in that amendment. Thus, the release must operate by its express, bilateral terms, and those terms did not release the Carrier from the Rule 55G sick day claim.

We are mindful that Rangel provided a statement during the handling of the case on the property that, contrary to the Claimant's assertion, he did not make any verbal assurances to the Claimant with regard to her request for Rule 55G sick days and that the Board is not necessarily empowered to make credibility assessments as other tribunals might. However, there is no question that the Claimant amended the terms of the release to put Rangel, and therefore the Carrier, on notice that she did not waive her claim to Rule 55G sick days and that Rangel agreed with those terms. Thus, it is of no consequence whether or not Rangel made any assurances as alleged by the Claimant.

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**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 16th day of November 1999.**

**Carrier Members' Dissent  
to Third Division Award 33647 (docket CL-33922)  
(Referee Perkovich)**

On January 10, 1995, Carrier advised the Organization of the implementation of Phase IV of the consolidation of forces into the Customer Support Center (CSC) at Ft. Worth, Texas. Claimant was one of the individuals to be transferred to the CSC.

On January 30, 1995, Claimant initiated a claim seeking to buy back her accumulated sick days under the provision of Rule 55G.

On February 27, 1995 Claimant signed a voluntary separation release agreement in which, for a sum certain, she released the Carrier from, ". . .any and all claims arising out of or pertaining to my employment with and by BN. . . ." She added at the bottom of the release the following:

"was assured verbally by Ernie Rangel before signing that vacation, sick, any wages - specifically buy back days would be paid separately from separation money."

While Mr. Rangel signed the release as a witness, there was no evidence that such was after Claimant's addition. Further Carrier specifically denied, via a statement by Mr. Rangel that no such assurance had been given verbally or otherwise. Thus the Majority's conclusion that Rangel "joined in that amendment" is without substance and support in this record.

Further, during the on-property handling Carrier noted:

". . .the Organization has previously been furnished with a statement from Mr. Rangel advising that he did not inform Claimant of any such thing. Secondly, it has always been the Carrier's practice to include any additional compensation due as part of the lump sum separation."

The thrust of the Majority's decision is that the Carrier, through its agent, concurred in amending the release. This Dissent is being issued to state that such amendment was not agreed to by the Carrier. Further, it must be stated that the language releasing the Carrier of "any and all claims" means exactly what it says. Claimant's action on February 27, 1995 included the January 30, 1995 claim.

We Dissent.

  
Paul V. Varga

  
Martin W. Fingerhut

  
Michael C. Lesnik