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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37369
Docket No. MW-37287
05-3-02-3-300

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(BNSF Railway Company (former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. S. M. Fliflet on June 16, 2000 for alleged violation of Rule 1.6(4)(5) of the Maintenance of Way Operating Rules in connection with charges of alleged dishonesty and immoral conduct regarding an on duty injury sustained on March 1, 2000 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [System File T-D-2044-H/11-00-0382D(MW) BNR].
- (2) As a consequence of the violation referred to in Part (1) above, “***The Carrier must immediately restore Claimant to the service of the Carrier, with seniority unimpaired, any reference to this investigation, and any discipline must be removed from Mr. Fliflet’s record and Mr. Fliflet must be made whole for any and all losses.”

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.

This case was argued at length before the Board on September 22, 2004. Subsequent thereto, under date of October 18, 2004, the Claimant and the Carrier entered into a settlement Agreement. That Agreement relieved the Carrier from liability for:

“C. Any and all other claims, whether known or unknown, including, but not limited to illness, injuries, or damages resulting from alleged exposure to noise, smoke, fumes, dust, mixed dusts, gases, chemicals, fibers, or any other type of exposure, or any accident, incident, trauma or other musculoskeletal condition, mental or emotional stress, or any other claims relating to any employment practices, labor claims, claims under the Americans with Disabilities Act, or any similar state or federal law, or any other claims resulting from or arising from my employment with Releasees (sic), including any claim for present or future reinstatement which I hereby expressly waive and release.”

In light of the above cited release, the Board has no jurisdiction to decide the dispute because it has been rendered moot.

AWARD

Claim dismissed.

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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 24th day of February 2005.