

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37383
Docket No. MS-36798
05-3-01-3-333

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

(Kenneth L. Fellows

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

"Mr. Fellows therefore seeks:

- a) reinstatement of his position with the carrier Burlington Northern Santa Fe Railroad with full seniority and all associated rights; and
- c) retroactive pay and/or damages compensating for injuries and loss sustained during Mr. Fellows extended period of unemployment."

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.

The Claimant was first employed by the Carrier in 1993. In 1997 the Carrier sold certain rail property to International Reload Systems, a Canadian concern, which in turn assigned the property to its affiliate, International Rail Road Systems. On December 19, 1997 the Claimant was laid off and while he was in layoff status the Canadian Labour Board determined that International Rail Road Systems was a successor to the Labor Agreement between the Carrier and the Brotherhood of Maintenance of Way Employees. On July 16, 1998 the Claimant, after conferring with BMW representatives, elected to resign his employment and in so doing, signed a release expressly relinquishing "... all ... rights as an employee ... and other rights which may heretofore have accrued ... as an employee." Moreover, the document also noted that his resignation was "absolute and unqualified." Subsequently, the Brotherhood of Maintenance of Way Employees filed and pursued a claim on behalf of the Claimant alleging that he should have been offered priority hiring consideration. The claim was processed until it was pursued before the Board by the Claimant.

We find that the claim must be rejected. The terms of the release are clear and unequivocal and bar the claim. In reply the Claimant argues that the release must be ignored because it was obtained under duress. We disagree. The record shows no sort of physical or mental pressure that was brought to bear and, rather, shows that the Claimant considered the benefits that he would obtain if he signed the release and that he ultimately resigned only after discussing the matter with the Brotherhood of Maintenance of Way Employees.

AWARD

Claim denied.

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.