

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39128
Docket No. MW-38292
08-3-NRAB-00003-040171
(04-3-171)

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier removed System Gang employe W. Allen from service on January 13, 2003 and withheld him from service beginning January 14, 2003 and continuing (System File J-0350-51/1359730).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant W. Allen shall now “*** be allowed compensation from January 14, 2003 and continuing until such time as he is allowed to return to service for all hours he was not allowed to work for the Union Pacific Railroad. This claim also includes any overtime hours that Claimant Allen would have been allowed to work. Benefits and Railroad Retirement Credits are claimed as if he had worked.”

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 claim asserts that the Claimant was improperly withheld from service commencing January 14, 2003.

As a result of an on-duty accident, the Claimant was unable to perform duties during various periods in 2002 and 2003, including the period January 14 to March 10, 2003. On January 14, 2005, the Claimant executed a "Release of All Claims" in exchange for payment of a sum of money from the Carrier. The release states, in relevant part:

"I hereby release Union Pacific Railroad Company . . . formerly known as Southern Pacific Transportation Company . . . and Missouri Pacific Railroad Company . . . from any and all claims and liability of every kind or nature . . . arising out of an accident on or about the 28th day of April, 2002 at or near North Powder, Oregon, resulting in personal injuries. . . ."

* * *

The release covers the dates in this claim when the Claimant alleges he was improperly not allowed to return to service. The Claimant released the Carrier from liability for the period in dispute. This claim must therefore be dismissed.

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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 7th day of July 2008.