

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41400
Docket No. MW-41452
12-3-NRAB-00003-100261**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement when it failed to properly provide Mr. C. Waits with a Leave of Absence as requested under Rule 15 at Seattle, Washington on March 4, 2008 (System File S-P-1297-G/11-08-0331 BNR).**
- 2. As a consequence of the violation referred to in Part (1) above, Claimant C. Waits shall now ‘. . . be made whole for any lost wages and the Carrier to cease the practice of declining a Leave of Absence in accordance with the Agreement.’”**

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.

On April 25, 2008, the Organization filed a claim on behalf of the Claimant based on the contention he was improperly denied his request for a medical leave of absence for 60 plus calendar days, and instead, was placed in an on-duty injury status under the management of the Medical and Claims Department. According to the Organization, that was a clear violation of Rule 15. It concluded by requesting that the claim be sustained as presented.

It is the Carrier's position that there was no "arbitrary" refusal of a leave of absence and that its denial of the Claimant's request for a medical leave was proper. It argued that the Claimant's request was based on an on-duty injury. It asserted that it is Carrier Policy to place all employees who are injured on-duty into a medical management program so they can be properly managed by the Medical and Claims Department. It further stated that to its knowledge, no injured person had ever been carried on a medical leave of absence. Thus, there was no violation of Rule 15. Additionally, it argued that the merits of the case are no longer properly before the Board because on February 9, 2009, the Claimant signed a Release & Settlement Agreement in which he waived all labor claims, including this one, and both the Organization and the Claimant are now estopped from seeking punitive damages. It closed by asking that the claim remain denied.

Following a thorough review of the record, the Board concludes that a release executed by the Claimant on February 9, 2009 fully released the Carrier from any and all claims, causes of action, and liabilities of any kind arising out of his employment with the Carrier. That release includes the instant claim. Therefore, the Board finds and holds that the dispute at bar has become moot because the Claimant relinquished all rights as an employee, including all labor claims. In view of the foregoing, the instant claim is dismissed.

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 25th day of July 2012.