

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26345
Docket Number SG-26258

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad Company:

Claim in behalf of Mr. C. Carter, former Webster Groves Signal Maintainer, that he be reinstated to his former position, compensated for all lost wages (including: lost time, overtime he would have been entitled to, holiday pay, and any pay differential), reinstate all seniority rights, reinstate all employment rights and benefits, and remove any reference of this incident from his personal record, account of Carrier violated the current agreement, particularly Rule 54G. Carrier file SI-83-12-22. General Chairman File C-83-323.

OPINION OF BOARD: The Claimant was a Signal Maintainer headquartered at Webster Groves, Missouri. By letter of March 23, 1983, the Claimant was notified he was to attend a formal investigation relating to a violation of the Hours-of-Service Act. The investigation was held on April 13, 1983. The Hearing Officer determined the Claimant had failed to comply with instructions of both the Hours-of-Service Act and instructions issued by the Engineering Department. As a result, he was restricted to work under the direct supervision of a Signal Foreman.

The Organization argues the Claimant was not afforded a fair and impartial investigation. It also argues the record does not support the Carrier's discipline and, furthermore, the discipline is excessive.

Before we can address these issues, the Carrier's Answer to the Organization's Submission contends that on March 11, 1985, the Claimant executed a release of all Claims in consideration of a \$140,000 payment. This was purportedly brought to the General Chairman's attention by letter dated July 2, 1985. On August 27, 1985, the Organization, apparently, notified the Carrier it was unable to withdraw this Claim because it was not part of the Claimant's settlement.

The release signed by the Claimant states in pertinent part:

"... I release and forever discharge Burlington Northern Railroad Company and all other parties whomsoever, from all claims and liabilities of every kind or nature, including claims for injuries, if any, which are unknown to me at the present time, arising out of an accident on or about August 26, 1983, at or near St. Louis, Missouri, while I was employed as a signalman and in further consideration of this settlement, I hereby resign from service of said company and release said company from all claims in connection with seniority or employment rights (Pending EEOC Claim excluded)."

The Carrier argues this negotiated settlement and release renders the dispute moot and, accordingly, asserts the Board lacks jurisdiction over the Claim as presented.

The language of the release is broad. If there were any question concerning the Claimant's interest to release the Carrier from any and all claims, the specific exclusion of a pending EEOC claim satisfies this Board that the Claimant voluntarily absolved the Carrier from all claims and did not restrict the release to such claims as arose from the alleged injury on August 26, 1983. This Board has no alternative but to conclude this specific release materially impacts upon our jurisdiction. See Third Division Awards 20832, 22645, 24869 and 25678. We subscribe to the view that if the language of the release supports a finding the release encompasses all claims, the employee is bound by the settlement and release. Accordingly, the Claim before us is moot and barred from our consideration.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Claim is barred.

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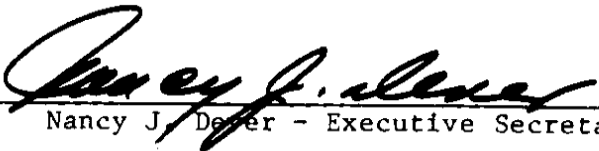
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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.