

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26470
Docket Number MS-27189

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Charles P. Holgate
(
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "The individual states his claim as follows:

Did Burlington Northern Railroad have the right to withhold employment and back-pay, as agreed to by B.R.A.C. representative and Terminal Superintendent, because of a Release of Claim that I was induced to sign by Burlington Northern agent, James L. Steele, through deliberately false and fraudulent statements that I would not be reinstated, and unless the release was signed, I would have all injury benefits withheld. Because of this, I did sign said release and my employment was terminated.

In truth and fact, Burlington Northern Railroad was unaware of the release and resignation and surrender of my employment rights and agreed to reinstate me with seniority unimpaired without pay for time lost. However, when it was learned that I had already relinquished my seniority rights, the reinstatement offer was cancelled.

Because of the above, I have suffered financial loss, loss of pension benefits, loss of career position, and the other security offered by employment with Burlington Northern as a Union employee."

OPINION OF BOARD: The record shows that the Claimant (Petitioner) was dismissed from service by the Carrier, effective May 22, 1984, following a formal Investigation in connection with his allegedly attempted forced entry into a locked office of the Carrier on May 12, 1984.

Following Claimant's dismissal, Claim was initiated by the Local Chairman of the Collective Bargaining Unit representing the craft in which Claimant had been employed, that Claimant be reinstated to the service of the Carrier with all rights and seniority unimpaired, and that he be reimbursed for all wages lost from May 22, 1984. On July 2, 1984, Agreement was entered into by Carrier's Superintendent and the Local Chairman of the Organization, providing for the reinstatement of Claimant as a matter of managerial leniency but without pay for wages lost as a result of his dismissal.

The record also shows that on June 28, 1984, in settlement of a Claim involving an alleged personal injury, Claimant signed a document titled "RELEASE OF ALL CLAIMS" containing the following language:

"...for the sole consideration of \$30,000.00... I release and forever discharge Burlington Northern Railroad Company...from all claims and liabilities

of every kind and nature... I...further understand and agree... that this voluntary resignation constitutes a complete surrender of all my rights, including seniority rights, under any collective bargaining agreements between Burlington Northern and any labor union..."

At the bottom of the form, Claimant wrote in his own handwriting:

"I have read and fully understand the above release and agree I am giving up my right to return to work."

On July 12, 1984, Carrier's Superintendent wrote to the Local Chairman of the Organization:

"Refer to your conversation this date with Tom Lee of my staff concerning the reinstatement of former crew hauler C. P. Holgate.

Inasmuch as Mr. Holgate relinquished his seniority rights with the Claims Department on June 28, 1984, the previously agreeded (sic) upon reinstatement is hereby cancelled."

Claimant then attempted further handling of Claim for reinstatement with pay for time lost, which Claim was rejected by the Carrier. Claimant and his attorney initiated a law suit against the Carrier in the United States District Court, Western District of Washington, which suit was dismissed by the Court.

The issue before the Board is whether the terms of "RELEASE OF ALL CLAIMS" signed by Claimant on June 28, 1986, released the Carrier from further employment by Claimant. We find and hold that the language of the release signed by Claimant did release the Carrier from further employment of Claimant. We must give the language of the release its ordinary and customary meaning. Claimant clearly terminated any right to future employment by the Carrier.

The Claim before the Board is moot and must be dismissed. (See Third Division Award Nos. 20832, 22645, 24869, 25678.)

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

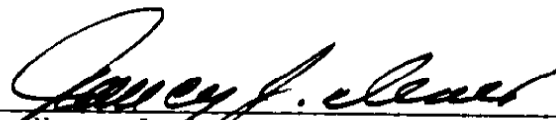
That the Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of September 1987.