

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31915
Docket No. MW-32299
97-3-95-3-129

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

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE:(
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of employe F. D. Feeney for alleged '...violation of Rules 568 and 576 of the Safety Rules and General Rules, by your failing to comply with written instruction dated September 27, 1993 and October 18, 1993, of which you were notified by letter addressed to you, and Rule 570 of the Safety Rules and General Rules, by being absent from your usual calling place and subsequent unauthorized absence from duty October 25, 1993, and your continued unauthorized absence thereafter while assigned as sectionman on RP - 08***' was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File T-D-723-K/MWB 94-04-12AA).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant F. D. Feeney shall '...be returned to service with the Company with his seniority unimpaired, paid for all time lost, at his proper rate of pay, credited for vacation time and all fringe benefits (sic) which were denied account of this improper discipline.'"

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.

Claimant F. D. Feeney was off duty due to an injury he sustained on the job. He was notified by the Carrier to provide medical documentation to support his absence. On October 18, 1993, the Carrier again requested that the Claimant provide medical documentation to support his continued absence from work. The Carrier instructed the Claimant to forward this information by October 25, 1993. The Carrier did not receive the requested information and, therefore, notified the Claimant by letter dated October 27, 1993, that he was to appear for a formal investigation into the charges of failing to comply with instructions and his continued unauthorized absence from work.

The Hearing was held on November 4, 1993 with neither the Claimant nor his Representative present.

This claim arose when the Claimant was subsequently dismissed from the Carrier's service after being determined guilty of violating Carrier's Safety Rules & General Rules 568 and 576, for failing to comply with instructions and Rule 570, prohibiting continued unauthorized absence from work.

The Organization filed the instant claim on behalf of the Claimant contending that the Claimant had contacted his physician and requested him to send the needed medical documentation to the Carrier. The information was received by Claimant and immediately forwarded to the Carrier on November 3, 1993. The Organization also argues that the reason that the Hearing was held in absentia was that a snowstorm had prevented the Claimant and his Representative from attending the Hearing. The Organization points out that the Representative had contacted the Carrier advising it of the weather conditions, but that the Carrier refused to postpone the Hearing.

The parties being unable to resolve the issue at hand, this matter now comes before this Board.

This Board has reviewed the record in this case and we find that on November 1, 1994 the Claimant executed a release of all claims releasing and discharging the Carrier from all claims and liabilities of every kind and nature. Because this claim arose before the execution of that release by the Claimant, this Board must find that the claim must be dismissed.

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 4th day of March 1997.