

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34037
Docket No. CL-34666
00-3-98-3-299**

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Burlington Northern Santa Fe Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12023) that:

1. Carrier arbitrarily, capriciously, and unjustly suspended Mr. R. L. Rock “. . . from the service of the Burlington Northern for a period of 15 days beginning Tuesday, February 13, 1996, and concluding Tuesday February 27, 1996.”
2. Carrier violated Rules 59 and 60 of the Working Agreement when the designated officer to receive claims and grievances did not decline the clam within the time limits set forth within the Working Agreement.
3. Carrier must now reimburse Mr. R. L. Rock for all lost wages and benefits as a result of the investigation held on February 1, 1996, and remove all reference to the matter from his personal record.

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.

At the relevant time, the Claimant was a Relief Clerk working at Longview Junction, Washington. This claim filed March 18, 1996, protests the Carrier's February 12, 1996 imposition of a 15-day suspension for the Claimant's failure to notify the crew of train 01-661-18 of an unsafe condition on or about 11:00 P.M. on January 18, 1996.

The Board cannot reach the merits of the dispute. On February 15, 1998, the Claimant executed a Resignation and Release Agreement that contained the following relevant language:

"I hereby elect to be placed on a "Reserve Board" under the terms and conditions set forth in the Agreement between the Burlington Northern and Santa Fe Railway Company and its respective employees represented by the . . . TCU . . . dated December 19, 1995. . . . I understand this election is irrevocable.

I understand that, unless recalled by the Company, I shall remain on the Reserve Board either for six years, until I become eligible for an unreduced annuity under the Railroad Retirement Act; or until my death, whichever occurs first. During this time I understand I shall retain my seniority and an employment relationship with the Company. I agree, however, not to mark up or attempt to use my seniority in any manner. . . .

Effective upon the issuance by the Company of the last monthly payment due me as a Reserve Board participant, I hereby knowingly and voluntarily resign from the service of the Company. This resignation shall constitute a complete relinquishment and surrender unto the Company of any and all my employment rights, including seniority, health and welfare, and other rights and benefits which may have accrued to me as an employee of the Company.

For and in consideration of the above, I hereby release the Company from any and all claims of any nature, known or unknown, which I have or might have against the Company, including, but not limited to, claims which derive from or are based on any aspect of my employment relationship with the Company or my resignation of such employment. Claims which I relinquish under this Agreement include, but are not limited to, personal injury claims, contract claims, labor claims, employment claims, claims arising under any federal, state or local common law or statute, including without limitation the Interstate Commerce Act, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000 et seq., the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 et seq., and claims arising out of any legal restriction on the Company's right to terminate its employees. Notwithstanding the foregoing, I understand this release does not apply to any labor claims pertaining to the proper monthly amount of my reserve board payments.

If I am recalled to service by the Company while occupying a Reserve Board position, this resignation and release shall be of no force or effect.

I acknowledge and affirm that I have carefully read this Resignation and Release Agreement that I have been afforded the opportunity to seek independent advise concerning the meaning of its language that I fully understand its terms and conditions, and that I am acting of my own free will in executing this Agreement."

After the imposition of the 15 day suspension and filing of this claim, the Claimant executed a Release where the Claimant agreed that "I hereby release the Company from any and all claims of any nature, known or unknown, which I have or might have against the Company, including, but not limited to, claims which derive from or are based on any aspect of my employment relationship with the Company . . . which . . . include, but are not limited to . . . labor claims, [and] employment claims. . . ." By its plain terms, the Resignation and Release Agreement covers this claim.

The Organization correctly argues that the Resignation and Release Agreement is conditional in that it provides that "[i]f I am recalled to service by the Company while

occupying a Reserve Board position, this resignation and release shall be of no force or effect." However, that condition has not taken effect.

The Claimant waived this claim when he signed the Resignation and Release Agreement. We therefore cannot consider the merits of this claim. (See Third Division Awards 31915, 32571).

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 25th day of May, 2000.