

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35560
Docket No. MW-32603
01-3-95-3-539**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Burlington Northern Railroad Company
((former Colorado and Southern Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it telephoned Foreman E. J. Mondragon at his home on September 5, 1994 (Labor Day holiday), instructed him to call the employees assigned to him and advise them not to report early for work on September 6, 1994 as previously instructed and then failed to pay him for such work (System File CS-94-16/MWD 94-12-12AA CSR).**
- (2) As a consequence of the violation referred to in Part (1) above, Foreman E. J. Mondragon shall be allowed two (2) hours and forty (40) minutes, pay at his time and one-half rate.”**

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.

Prior to the 1994 Labor Day weekend, the Trinidad Sectionmen were instructed to report early for work on September 6, 1994. At approximately 8:00 A.M. on September 5, 1994, however, the Claimant received a call from his Supervisor and was instructed to contact each of the Sectionmen in the Trinidad Section Crew and advise them not to report to work early on September 6, 1994. According to the Organization, the Claimant interrupted his Labor Day holiday activities by complying with these instructions, telephoning each Sectionman in his charge and advising them not to report early for work on September 6, 1994. In making out his payroll for the designated holiday in question, the Claimant included two hours and 40 minutes at his time and one-half rate for the telephoning service performed on Labor Day. This claim appeals the Carrier's refusal to pay the Claimant for that "minimum call."

On March 19, 1999, more than a year prior to the oral argument of this claim before the Board, the Claimant entered into an "Agreement Not to Mark Up/Resignation," wherein he accepted certain sums of money from the Carrier in return for his "irrevocable resignation" and his "full and complete settlement" of, *inter alia*, "all claims that have been or could be brought under the Railway Labor Act whether known or unknown which I now have or may hereafter accrue to me, on account of or in any way related to my employment with the Burlington Northern and Santa Fe Railroad Company." On that basis, the claim is dismissed as moot, without further comment.

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 24th day of July, 2001.