

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39281
Docket No. SG-39147
08-3-NRAB-00003-050622
(05-3-622)

The Third Division consisted of the regular members and in addition Referee Joyce M. Klein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad (BNSF):

Claim on behalf of D. E. Collins II, for payment of Off-Track Vehicle Accident benefits beginning September 1, 2004, and continuing for a period of 156 weeks or until the Claimant is authorized to return to work by his personal physician and the Carrier’s Medical Department, account Carrier violated the current Signalmen’s Agreement, particularly Appendix I, when it removed the Claimant from service on August 31, 2004, and discontinued payments under the provisions of the Off-Track Vehicle Accident Agreement in an attempt to abrogate the benefits that are guaranteed to the Claimant under the provisions of this Agreement. Carrier’s File No. 35 04 0058. General Chairman’s File No. 04-114-BNSF-133-T. BRS File Case No. 13304-BNSF.”

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.

On July 16, 2004, the Claimant lost control of his vehicle and was injured while driving between work locations. On August 31, after a formal Investigation, the Claimant was dismissed from service for his negligence in operating the vehicle and for failing to wear a seatbelt. For the period between July 16 and August 31, 2004, the Carrier provided payments to the Claimant under the terms of the Off Track Vehicle Accidents Agreement. Once the Claimant was terminated, the Carrier discontinued his Off Track Vehicle benefits.

The Organization filed a claim for payments to the Claimant under the Off Track Vehicle Accidents Agreement. On November 17, 2005, the Claimant and the Carrier entered into a compromise settlement agreement and release in full of all claims. That settlement specifically included a release "for damages of any kind arising from any labor claims/disputes." The settlement also released, acquitted, and discharged "any and all actions, causes of action, claims, demands, damages, costs, expenses, and compensation on account of, related to or in any way growing out of any and all known and unknown labor claims/disputes."

The Organization maintains that the Claimant is still qualified for compensation of lost time under the Off Track Vehicle Accidents Agreement because the Carrier's decision to stop payments after it dismissed him from service was improper and because the exclusions to the Off Track Vehicle Accidents Agreement do not cover the Claimant.

The Carrier argues that the settlement and release of all claims against the Carrier, specifically including his labor claims, makes this dispute moot. The

Carrier cites several awards where the Board has held that it lacks jurisdiction to proceed with moot cases.

Although the Organization seeks to pursue its claim for Off Track Vehicle Accident benefits on behalf of the Claimant, the Claimant has already reached a settlement of any claims under that Agreement, as well as any other claims he had against the Carrier. That settlement renders moot any effort by the Organization to proceed on the Claimant's behalf. Several Awards have recognized that once an employee enters into a settlement and release, the disputes that are the subject of that settlement and release are deemed to be adjusted and thus, the Board no longer had jurisdiction to address those disputes. See Third Division Awards 19530 and 20832.

Accordingly, the Board finds that once the Claimant executed a settlement and release, he ended his ability to pursue the adjustment of his claims before the Board.

AWARD

Claim denied.

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 21st day of July 2008.

Organization's Dissent

Award 39281 (Docket SG-39147)

Referee Joyce M. Klein

Dissent to this decision is required because the majority ignores the facts of record and also because it continues to allow the misapplication of the **Off Track Vehicle Accident Agreement**. There is no dispute in this record that the Claimant made a monetary settlement and released Carrier from any more personal liability concerning this dispute. However, the majority erred when it ruled that this effectively settled all matters in reference to this dispute.

The Organization clearly recognizes that the Claimant settled his monetary dispute with Carrier, but since settlement was reached after the initial progression of this claim to the Board, the Organization was stuck with the fact that the Statement of Claim still asked for a monetary resolution. What the majority of this Board failed to recognize is that the Statement of Claim and the Organization's submission also asked for interpretation of the Off Track Vehicle Accident Agreement's exclusion provisions. Throughout the Organization's submission it was the position of the Organization that Carrier could not simply terminate the Claimant and relieve itself of any further obligation under the Off Track Vehicle Accident Agreement provisions. This could not be clearer when the Organization stated that:

"The Board has clearly ruled that the Organization is not barred from its progression of this Off-Track Vehicle Accidents Agreement claim. The Organization requests this Board to assess and resolve this dispute on its merits, so as to provide the parties a corrected definitional framework for the future.

In applying the above, the issue at hand in this instant dispute and the questions that merit an answer from the Board are as follows:

- (1) *Was the Claimant eligible for payment of Off-Track Vehicle Accident benefits beginning September 1, 2004, and continuing for a period of 156 weeks or until the Claimant is authorized to return to work by his personal physician and Carrier's Medical Department?*
- (2) *Did the Carrier have the right to discontinue off-track vehicle accident payments on the grounds that the Claimant was now a dismissed employee, and therefore, no longer an employee of the Carrier?*

It is the contention of the Organization that Carrier violated Appendix 1, the Off-Track Vehicle Accidents Agreement, when it discontinued payments on September 1, 2004, in an attempt to abrogate the benefits that are guaranteed to the Claimant under the provisions of the Off-Track Vehicle Accidents Agreement.

In conclusion, the Organization respectfully requests the Board to resolve this dispute on its merits by answering the two questions above in final settlement of this dispute."

The majority in this case chose to ignore the fundamental underlying agreement violation and instead simply chose the easy way out. This decision allows Carrier to simply "starve out" the next employee caught in this circumstance in hopes of making another "low ball" settlement. The Board has long recognized the employee's right to settle, but what was ignored by this Board is that it has also been long recognized that the Organization has the right and the duty to police agreements. In Third Division Award 20237, it was held that:

"...we are convinced that the sounder principle is the one upholding the Organization's right, indeed its duty, to police the Agreements it has negotiated, irrespective of individual settlements. It appears self-evident that this principle is most compelling in cases such as the instant one where not just a monetary claim is at stake but alleged violations of the negotiated procedural safeguards surrounding this imposition of employee discipline. Accordingly, we hold that notwithstanding the purported settlement on the property, this claim is properly presented for consideration by the Board."

The Organization is disheartened that the majority chose this path which simply amounts to a colossal waste of time for everyone involved. This Award clearly has no precedential value and the Organization can only hope that next time the parties will see fit to rule on the issues.



C.A. McGraw, VP BofRS
Labor Member NRAB
Third Division