

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39359
Docket No. SG-38384
08-3-NRAB-00003-040319
(04-3-319)

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna 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:

Claim on behalf of K. E. Soper, for return to service and compensation for all lost wages, including overtime and skill pay, and all other employment rights beginning February 28, 2003, and continuing until resolved, account Carrier violated the current Signalman’s Agreement, particularly Rules 19 and 36, among others, when on February 28, 2003, it withheld the Claimant from service after his treating physician released him to return to work without restrictions and with only a temporary recommendation of working with a co-worker for about two weeks. Carrier action’s [sic] has created undue hardship on the Claimant and his family. Carrier’s File No. 36 03 0066. General Chairman’s File No. 03-047-BNSF-188-SP. BRS File Case No. 13000-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.

The relevant facts in this case are not in dispute.

In May 2002, the Claimant sustained an on-duty back injury that resulted in his absence from work. On February 28, 2008, the Claimant notified the Carrier that his treating physician released him to return to work without restrictions. The Carrier refused to permit the Claimant to return to service, contending that the Claimant did not secure a "Fitness for Duty Recommendation" given to him by the Carrier's Medical Officer. By letter dated April 21, 2003, the Organization filed the instant claim, maintaining that the Carrier's action violated Rules 19 and 36 of the Agreement.

Subsequent to the filing of the instant claim, the Claimant signed a "Release and Settlement Agreement." In this Agreement, executed on September 8, 2005, the Claimant released the Carrier from all claims and liabilities, including "Labor Claims." In addition, the Claimant represented that his sustained injuries "[w]ill forever and permanently disable me from returning to work," and accordingly, released the Carrier from all claims related thereto, including but not limited to "[a]ny claim arising from or in any way related to [the Claimant's] employment with said Company, including any claim for present or future reinstatement which I expressly waive and release. As part of this settlement, I hereby resign my employment (or agree not to return to work for the said Company in any capacity) effective January 1, 2007."

In light of the foregoing release, the instant claim must be denied.

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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 October 2008.