

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42360  
Docket No. MW-42395  
16-3-NRAB-00003-130290**

**The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Maintenance of Way Employees Division -**  
**( IBT Rail Conference**  
**(BNSF Railway Company (former Burlington**  
**( Northern Railroad Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- 1) The Carrier violated the Agreement when it improperly terminated the seniority of Mr. T. R. King by letter dated April 19, 2011 (System File S-P-1598-G/11-11-0293 BNR).**
- 2) As a consequence of the violation referred to in Part (1) above, Claimant T. R. King shall now have his seniority and other rights and benefits restored and he shall be compensated for all straight time and overtime work that he lost as a result of the improper seniority termination.”**

**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 April 10, 2011, the Claimant requested leave for up to two weeks. Allegedly, it was verbally granted on April 11 through April 20, 2011. On April 17, the Claimant requested an extension of the leave for an additional week. On April 18 the Claimant was advised his request was denied. The Claimant's employment was subsequently terminated on April 19.

He executed a Release and Settlement Agreement dated March 22, 2012, which stated as follows:

"In consideration of the settlement made with me by BNSF Railway Company ("BNSF"), and any predecessor or successor companies, affiliated, related, subsidiary and parent companies, for injuries sustained by me on or about April 23, 2009, at or near Nisqually, Washington while working as a/an MOW Laborer, I, Thomas R. King, agree to never return or attempt to return to railroad work in any capacity with BNSF, or successor, affiliated, related, subsidiary and parent companies, because of the permanent injuries and disabilities I sustained in the above mentioned incident. In the event I attempt to return to duty, in any capacity, this will serve as and constitute my resignation and termination of employment relations with BNSF.

I hereby assert and agree that said sums paid to me are based upon representations of such permanent disability that will forever prohibit and incapacitate me from returning to any railroad employment.

Furthermore, I hereby acknowledge that my employment relationship with BNSF ended on April 19, 2011 when I forfeited my seniority rights, and I agree that since that date, I have had no exercisable seniority rights.

I, Thomas R. King, reassert my resignation from the service of BNSF and expressly release and relinquish unto BNSF all my rights as an employee, including seniority, health and welfare, labor claims and other rights which may heretofore have accrued to me as an employee of BNSF. This resignation is absolute and unqualified, with or without any acceptance by BNSF.

**I have read and understand the above Agreement Not To Mark Up/Resignation.”**

**The Agreement was dated March 22, 2012.**

**It is the Carrier’s position the merits of the case are not properly before the Board because the Claimant waived all of his labor claims, including this one.**

**The Carrier argues if the Board chooses to ignore the terms of the Release and Settlement Agreement, it must nonetheless deny the grievance. Supervisor Gordon stated he did not grant the Claimant a verbal leave of absence. According to Gordon, he told the Claimant he could grant up to a ten day leave if King furnished the dates. King called Gordon back to advise that he would be submitting a leave request, and Gordon instructed him to fax a copy to the office. The faxed leave request arrived at 10:23 pm on April 11. The request was for a six-day leave from April 12 to 17. The Claimant did not submit an online request for extension on Sunday, April 17 as the Organization alleges. According to Gordon, the Claimant only attempted to call him once, at 5:00 pm on April 18. This constitutes a failure to request an extension to his personal leave which expired on April 17. When he failed to mark up for duty on April 18, he was subject to Rule 15E: “An employee failing to report for duty on or before the expiration of their leave of absence will forfeit all seniority rights, unless an extension is obtained.” The nature of the Claimant’s family concerns is irrelevant.**

**The Organization argues the Claimant was in an impossible situation and instead of complying with the Agreement the Carrier showed no compassion and terminated the Claimant. The Organization avers the Carrier has violated rules 1, 2, 5, 15, 24, 25, 29, 30, 44, 69, 80 and current rate of pay of the applicable Agreement and the claim should be allowed. The Carrier knew the Claimant was experiencing serious family medical problems; he tried to contact Gordon no less than 13 times. The Claimant’s leave expired on April 18, but he called to request an extension. However, he was terminated anyway. The Organization maintains he did everything to comply with leave policy and his situation warrants special consideration. Gordon could have granted the ten days based on the verbal conversation.**

**The Board has carefully reviewed the record and finds the Claimant’s March 22, 2012 Release and Settlement Agreement is clear and specific in relinquishing any**

and all rights he had to employment. It follows that the Claimant cannot seek reinstatement to his position with BNSF.

**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 30th day of August 2016.