

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44907  
Docket No. MS-45838  
23-3-NRAB-00003-200197**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.**

**(Jeffrey Fisher  
PARTIES TO DISPUTE: (  
(BNSF RAILWAY**

**STATEMENT OF CLAIM:**

**“I Jeffery Fisher present the following claim on behalf of Texas District 800 Jeffery Fisher (1724871) Seniority Date September OS, 2006 for reinstatement with seniority rights restored and all entitlement to and credit for, benefits restored, including vacation, and health insurance benefits. The Claimant shall straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the claimant while wrongfully suspended); 2.) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while claimant was out of service; 3.) overtime pay for lost overtime opportunities based on overtime paid to any junior employee for work the claimant could have bid on and performed had the claimant not been suspended; 4.) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service commencing January 10, 2017, continuing forward and/or otherwise made whole. All notations of the dismissal should be removed from all Carrier records. The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.”**

**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 Claimant was terminated from his position with the Carrier and was reinstated to his position by Award 69 of Public Law Board 7590. The remedy provided in that Award is "Claim sustained in part and denied in part. Claimant is returned to work with a suspension, seniority unimpaired, and no award of backpay."

The Claimant sought review of that Award by the Third Division of the National Railroad Adjustment Board by letter received on August 27, 2019, seeking to be made whole with an award of backpay and benefits. The Claimant asserted that the Award was made in error. The Claimant asserted that information relevant to his initial claim was not presented to the neutral on the Public Law Board. He asked that the Third Division review the Award and take action against the BMWED.

The Carrier contends that the Third Division does not have the authority to review a final and binding award issued by a Public Law Board with jurisdiction over the matter. The Carrier contends that the Claimant's instant claim is barred by *res judicata*. The Carrier contends that once a dispute has been presented to and decided by an arbitrator, there are no grounds for relitigating the dispute before any other tribunal. Thus, the Carrier contends, the claim is barred.

Under the Railway Labor Act ("RLA"), the award of a public law board is "final and binding upon both parties to the dispute." 45 U.S.C. § 153 Second. In Third Division Award 36547, this Board explained that it cannot reconsider a final and binding decision rendered by a Public Law Board. There, the Board wrote:

In essence, the Claimants are attempting to relitigate the same claim that was adjudicated before the Board in Case 61 of Public Law Board No. 5473. However, that decision is final and binding under the Railway Labor Act and not subject to rehearing or "appeal" before the Board. Whether phrased as *res judicata*, collateral estoppel or *stare decisis*, every division of the Adjustment Board has recognized that the Board is barred from

reconsidering claims that have been previously denied by another Section 3 tribunal. First Division Award 24618; Second Division Award 8551; Third Division Award 22406; Fourth Division Award 3443. We have not been presented with any compelling reason to depart from this sound tenet in the matter at bar. Accordingly, the claim must be dismissed.

This same principle was upheld in Third Division Award 43145, on facts very similar to the ones in the case before us. There, the Claimant asked the Third Division to overturn a previous decision by a Public Law Board on a disciplinary matter. The Board denied the claim, relying on Third Division Award 36547.

We can find no reason to depart from these decisions.

**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 21<sup>st</sup> day of April 2023.