

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6986
AWARD # 6 CASE #6**

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employees

And

BNSF Railway Company

STATEMENT OF CLAIM

- “1. The Carrier violated the Agreement on August 15, 2006, when the Organization’s request for an investigation pursuant to Rule 91 of the Agreement for Claimant John P. Blair. The Claimant, an exempt employee, was dismissed for falsification of his employment application.
2. As a consequence of the Carrier’s violation referred to in part (1) above, the Claimant should be returned to service, paid for all lost time, and that all references to this incident shall be removed from the Claimant’s personal record.”

**Carrier File No. 12-06-0073
Organization File No. B-3095-1**

FINDINGS

A review of the record reveals that the Claimant was terminated by the Carrier for falsification of his employment application. The Claimant at the time of his termination was employed by the Carrier as an Assistant Roadmaster, which is an exempt position. The Carrier subsequently determined that the Claimant had failed to properly notify the Carrier of his prior legal problems when he completed his employment application.

The application for employment that the Claimant signed stated “I hereby certify that all statements and answers set forth on the application form and/or my resume are true and complete to the best of my knowledge and I understand that if subsequent to employment and such statements and/or answers are found to be false, or that information has been omitted, such false statements or omissions will be just cause for the termination of my

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Employment.

The record reflects that the Claimant as previously indicated was an exempt employee and there is no indication in the record that Rule 91 applies to exempt employees. As indicated in Third Division Award No. 36560 (Referee Benn) ruled regarding this issue and these parties "...Non-covered employees are not entitled to Rule 91 Investigations. " We have also noted Fourth Division Award No. 4704 and Award 64 of Public Law Board No. 63.

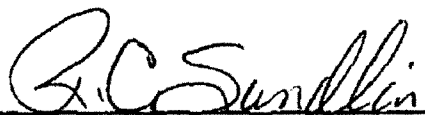
We find no fault in the reasoning in the Awards referenced regarding this issue. This Board does not have jurisdiction to consider the claim for a nonagreement exempt employee.

AWARD

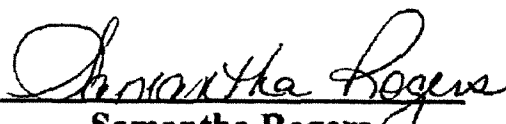
Claim dismissed in accordance with the findings.



Don A. Hampton, Chairman & Neutral Member



R.C. Sandlin
Organization Member



Samantha Rogers
Carrier Member

DATED: May 31, 2007