

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14027
Docket No. 13912
10-2-NRAB-00002-090026**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (
(International Brotherhood of Electrical Workers
(BNSF Railway Company

STATEMENT OF CLAIM:

- “(1) That in violation of the governing Agreement, Rule 40 in particular, the BNSF Railway Company arbitrarily and unjustly dismissed Electrician Brett Beier as a result of an investigation held at 2:30 p.m. on March 18, 2008.**
- (2) That accordingly, and as a result of this arbitrary, unjust and excessive discipline assessed Electrician Brett Beier, the Carrier be ordered to return Electrician Beier to service immediately and further compensate Electrician Beier for all lost wages, rights, benefits and privileges which have been adversely affected as a result of the dismissal.**
- (3) That accordingly, all record of this matter be removed from Electrician Brett Beier’s personal record.”**

FINDINGS:

The Second 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.

This dispute arises from essentially the same factual background as was the subject of Second Division Award 14026 decided concurrently by the Board. As recited at greater length therein, on April 16, following consolidated formal Investigations conducted on March 18, 2008, Claimant B. Beier was dismissed from his position as an Electrician at the Carrier's facilities in Topeka, Kansas, after failing to report to work on Monday and Tuesday, February 25 and 26, 2008. Those absences constituted his 12th and 13th absences following counseling on September 7, 2008 in which he was advised that discipline pursuant to the Carrier's Mechanical Attendance Policy would result from further unexcused absences.

As reflected in Award 14026, the Claimant was dismissed for calling Supervisor of Maintenance E. J. Thomas on Friday, February 22 (normally a duty day for him) and reporting that he would not be at work due to illness. That absence, which was not authorized in view of the Claimant's seriously deficient prior attendance record and his failure to adequately document the illness claimed, was the subject of Award 14026, which denied the Organization's claim and upheld the Claimant's dismissal.

This claim centers on a second dismissal action taken by the Carrier as a result of the Claimant's absences on February 25 and 26, which it considered separate events because of the Claimant's intervening days off on February 23 and 24.

In light of the Board's decision in Award 14026 upholding the Claimant's dismissal for failing to report for work on February 22, this claim is moot and will be dismissed.

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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 Second Division**

Dated at Chicago, Illinois, this 3rd day of November 2010.