

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14134  
Docket No. 14047  
16-2-NRAB-00002-150012**

**The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood Railway Carmen-Division of TCU/IAMAW**  
**(BNSF Railway Company**

**STATEMENT OF CLAIM:**

**“1.That the Burlington Northern Santa Fe Railroad Company violated the terms of our controlling agreement when, on March 10, 2014, the Carrier improperly dismissed Pasco, Washington Carman Lewis Hill, employee #XXXXXX, as a result of an investigation held on February 19, 2014.**

**2.That accordingly, the Burlington Northern Santa Fe Railroad Company shall be required to compensate Pasco, Washington Carman Lewis Hill, employee #XXXXXX, eight (8) hours pay at the pro-rata for all workdays, commencing March 10, 2014 and continuing until he is returned to active service as requested in Special Representative Bert Barnes’ initial claim and appeal. In addition, we also claim the following:**

- 1. return to service with seniority rights unimpaired;**
- 2. made whole for all vacation rights;**
- 3. made whole for all health, welfare and insurance benefits and doctor expenses for him and his family during the time he was held out of service;**
- 4. made whole for pension benefits including Railroad Retirement and unemployment insurance;**
- 5. made whole for any other benefits he would have earned during the time he was held out of service;**
- 6. made whole for all wages, overtime he could have worked, lump sum payments, general wage increases and cost-of-living adjustments;**

7. removal of all record of this unjust discipline from personal records.”

**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.

The Claimant was dismissed from the Carrier's service following a formal Investigation in connection with the following:

“ . . . your alleged carelessness of the safety of yourself and your apprentice at approximately 08:50 hours Monday February 3, 2014 at the Pasco Repair Track 2511 while working underneath freight car TR 874388 without goggles or faceshield, without gloves, and without proper reflective garment outside of the covered repair track building while on duty as a Pasco Carman.”

The basic facts in this case are not in dispute. At the formal Investigation, Assistant General Foreman Long was doing a walk through inspection of the shop when he observed the Claimant working underneath a freight car without his safety goggles. When the Claimant exited from underneath the car, Mr. Long saw that the Claimant was not wearing any other protective gear as noted in the above charge. The relevant Mechanical Safety Rules were entered into the record which required that the Claimant wear the proper protective equipment under the circumstances present herein.

When the Claimant testified at the Investigation, he was honest and forthright regarding his failure to wear the proper protective equipment and admitted that he

was in violation of the Mechanical Safety Rules. As explanation, the Claimant stated that he was working with an apprentice who was having difficulty changing a valve underneath the car and that when the Claimant went under the car to assist he did not have on his safety goggles and he removed his gloves for a portion of the task. Regarding the reflective vest, the Claimant thought that since a part of the car was under the shed, he did not need to wear the vest but acknowledged that he was mistaken in that the part of the car that he was underneath was outside of the roofed area. The Board finds that the evidence of record, including the Claimant's own admissions, clearly supports the Carrier's finding that the Claimant was guilty of the charged offense.

Relative to the discipline assessed in this case, the Carrier notes that its decision to dismiss the Claimant was in accordance with its Policy for Employee Performance Accountability (PEPA). Specifically, such Policy provides that a first serious violation will result in a 30-day record suspension and a review period of 36 months and that a second serious violation committed within the review period "may result in dismissal." The Carrier points out that at the time of this incident, the Claimant was under an active 36-month review periods for a Level S 30-day record suspensions assessed for a prior violation. The Organization argues that the discipline of dismissal was harsh and excessive.

Upon review of the entire record, the Board finds that the Claimant during his nine years of service with the Carrier has a relatively good record despite the fact that he was under a review period at the time of this incident. The Claimant did not try to shirk his responsibility in this matter and clearly recognized that his failure to wear the proper protective gear was unsafe and in violation of the Carrier's Rules. The Board believes that the Claimant should be given another chance to demonstrate to the Carrier that he can perform his duties in a safe and efficient manner. Accordingly, the Board rules that the Claimant should be reinstated to service with seniority unimpaired, but with no payment for time lost.

### **AWARD**

**Claim sustained in accordance with the Findings.**

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Second Division**

**Dated at Chicago, Illinois, this 5th day of October 2016.**