

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14147  
Docket No. 14046  
16-2-NRAB-00002-150011**

**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**  
**(The BNSF Railway Company**

**STATEMENT OF CLAIM:**

- “1. That the Burlington Northern Santa Fe Railroad Company violated the terms of our controlling agreement when, on April 4, 2014, the Carrier improperly issued discipline to Gillette, Wyoming Carman Timothy Ryan, EID 0044263, as a result of an investigation held on March 19, 2014.**
- 2. That accordingly, the Burlington Northern Santa Fe Railroad Company shall be required to remove the Level S-Combined Suspension consisting of 23 actual days suspension for the period of March 13, 2014 through April 4, 2014, and a 7 day record suspension with a three (3) year review period that commences on April 4, 2014, issued by letter dated April 4, 2014 and we are claiming eight (8) hours pay at the pro-rata rate for each workday he was withheld from service, commencing March 13, 2014 through April 4, 2014, and all other record of this unjust and improper discipline shall be expunged from his 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.**

**The Claimant was assessed a Level S-Combined Suspension consisting of 23 days' actual suspension and a seven day Record Suspension, in connection with the following:**

**“ . . . your alleged misconduct, being insubordinate when you failed to comply with instructions from your Supervisor in regards to signing safety briefing acknowledgement forms on March 12, 2014, at approximately 0730 hours, while assigned as a Carman.”**

**At the formal investigation, General Foreman Romero testified that at approximately 7:30 A.M. on the subject date, following the first shift safety briefing at Gillette Train Yard, safety briefing acknowledgement forms covering the topics that were discussed at the meeting were given to all employees present to sign. The General Foreman stated that he asked the Claimant to sign the forms two times and that the Claimant declined to do so, stating that the Union had advised him that he was not required to sign the forms. Mr. Romero further testified that at this point he told the Claimant that you have two senior supervisors who are instructing you to sign the forms but the Claimant responded that he could not sign them. The Claimant was allowed to return to work after he failed to sign the forms as instructed.**

**At approximately 11:57 A.M., the Claimant was called into General Foreman Romero's office where he was issued an OPS failure form for failing to follow instructions and again allowed to return to his assignment. Mr. Romero called the Claimant back into his office at approximately 2:50 P.M., at which time he issued the Claimant another OPS failure; however, the offense was upgraded to insubordination and the Claimant was removed from service pending a formal Investigation. The General Foreman testified that the Claimant acted in a professional manner during these encounters and that when the Claimant realized that he was being charged with insubordination, he offered to sign the forms but was told that it was too late. When the Local Chairman asked the General Foreman what had changed between the first and second issuance of the OPS failure, Mr. Romero responded that he had been advised to hold the Claimant out of service.**

When the Claimant testified at the Investigation, he stated that he did not believe that he was being instructed to sign the forms but rather that he was being asked and that he simply denied the request. The Board finds that while General Foreman Romero did testify that he asked the Claimant the first two times, both he and Mechanical Foreman Posten, who was present at the time, testified that he clearly instructed the Claimant to sign the form on the third time.

The Board finds that the Claimant failed to follow the instructions of the General Foreman to sign the safety briefing acknowledgment forms. While the Claimant may have been under the impression that he had the right to decline when asked the first two times, he certainly should have realized that this option was not available when he refused to sign after being told that he was being instructed to do so by his supervisor. While the record supports the conclusion that the Claimant failed to follow instructions, the Board does not believe that his behavior rose to the level of insubordination. It appears to the Board that up until his meeting with the Claimant at approximately 2:50 P.M., General Foreman Romero did not view this as an insubordination matter since after the Claimant's initial refusal to sign the forms and after the initial OPS failure, the Claimant was permitted to continue working.

Upon review of the entire record, the Board finds that the Carrier's decision to withhold the Claimant from service was unwarranted under the unique circumstances present herein. Accordingly, the Board rules that the Claimant should be paid as provided in Rule 35 for time lost while held out of service and that the discipline in this case should be modified to reflect a 30 day record suspension with a three year review period.

### **AWARD**

Claim sustained in accordance with the Findings.

### **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.

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

**Dated at Chicago, Illinois, this 20th day of December 2016.**