

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14157  
Docket No. 14050  
16-2-NRAB-00002-150007**

**The Second Division consisted of the regular members and in addition Referee Don A. Hampton when award was rendered.**

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

**STATEMENT OF CLAIM:**

- “1. That in violation of the Controlling Agreement, Rule 40 in particular, the BNSF Railway Company, as a result of an unfair and unwarranted investigation held on December 10, 2013 at Commerce, California, unjustly and arbitrarily assessed Mechanical Department Electrician Raul G. Perez the ultimate discipline of being dismissed from employment from the BNSF Railway.**
- 2. That accordingly, this Honorable Board overturn the guilty decision rendered by BNSF, and further order that the BNSF Railway Company promptly return Electrician Raul G. Perez to its service and to make him whole for any and all lost wages, rights, benefits and privileges which were adversely affected as a result of the unjust assessment of discipline and that all record of this matter be removed from his personal record, all in accordance with the terms of Rule 40 of the Controlling Agreement.”**

**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.

Claimant was notified by letter dated December 4, 2013:

“An investigation has been scheduled at 0800 hours, Tuesday, December 10, 2013, at the Locomotive Repair Building on the second floor, 6300 E. Sheila St., Commerce, CA, 90040, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to conduct yourself in an appropriate manner when you inappropriately touched Rudy Garcia at approximately 1430 hours on November 29, 2013.

This investigation will determine possible violation of MSR 1.2.9 Horseplay, MSR 26.4 Sexual Harassment, MSR 28.6 Conduct, and HR90.2 Workplace Harassment Policy.

This is to advise RAUL G. PEREZ is being withheld from service pending results of investigation.

Contact Radames Barajas at XXX-XXX-XXXX or [XXXX@bnsf.com](mailto:XXXX@bnsf.com) with any questions regarding this investigation, postponement or waiver.

Arrange for representation and any witnesses you may desire at the investigation as provided under applicable provisions of the Labor Agreement.

Please acknowledge receipt by affixing your signature in the space provided below.”

**Investigation was held on December 10, 2013, and Claimant was notified by letter dated December 26, 2013 (corrected letter dated January 27, 2014):**

**“As a result of investigation held on Tuesday, December 10, 2013 at 0800 hours at Mechanical Facility Training Room, 6300 E. Sheila St., Commerce, CA, 90040 you are hereby dismissed effective immediately from employment with the BNSF Railway Company for failure to conduct yourself in an appropriate manner when you inappropriately touched Rudy Garcia at approximately 1430 hours on November 29, 2013. The previous notice sent had a clerical error which showed investigation date of Friday December 6, 2013. The date is being corrected to Tuesday December 10, 2013.**

**It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MSR 1.2.9 Horseplay, MSR 26.4 Sexual Harassment, MSR 28.6 Conduct and HR90.2 Workplace Harassment Policy. In assessing discipline, consideration was given to your personnel record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).**

**Enclosed are copies of the investigation transcript and exhibits entered during the investigation. Copies of these documents have been sent to your Representative. This letter will be placed in your personnel record.**

**Please return all Company property and/or Amtrak transportation passes in your possession. A check will be issued for any monies owed you.”**

**The Claimant was terminated from the Carrier’s employment for violation of MSR 1.2.9 Horseplay, MSR 26.4 Sexual Harassment, MSR 28.6 Conduct and HR 90.2 Workplace Harassment Policy.**

The Organization argues that the Claimant did not receive a fair Investigation as mandated by the Controlling Agreement, that in fact the Investigation was unwarranted. The Organization further contends that the Carrier has not met its burden of proof; that the photos and video footage do not reasonably support the charges against the Claimant. In summary, the Organization avers the Claimant should immediately be returned to service, and made whole as required by the Controlling Agreement.

The Carrier responds that the transcript, photos, and video fully support the Carrier's disciplinary action. The claim should be denied in its entirety.

The Board has reviewed carefully the entire record before us. The Board would note that the record does not reveal any denial of the Claimant's due process rights. While the transcript does reveal issues of credibility, legions of Awards in this industry have held it is the Hearing Officer who resolves such issues, and not Boards such as this one.

The Board's review of the record confirms that the Carrier has met their burden of proof. The Carrier's discipline, considering the Claimant's less than stellar record was not inappropriate, and will not be disturbed.

**AWARD**

Claim denied.

**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 20th day of December 2016.