

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13981  
Docket No. 13864  
08-2-NRAB-00002-070036  
07-2-36

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

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

**STATEMENT OF CLAIM:**

- “1. That in violation of the governing Agreement, Rule 40 in particular, the Burlington Northern Santa Fe Railroad Company, as a result of an unfair and biased investigation held in the office of Superintendent LMIT located at 200 North Avenue H, Barstow, California at 8 AM, August 18, 2006 unjustly dismissed Electrician Roberto Ramirez from service.
2. That, accordingly, the Burlington Northern Santa Fe Railway Company be ordered to promptly return Electrician Roberto Ramirez to service and that he be made whole for all lost wages, rights, benefits and privileges which were adversely affected as a result of the investigation and unjust assessment of discipline, and further that all record of this matter be expunged from his personal record, all in accordance with the terms of Rule 40, Paragraph I 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 Ramirez, according to this record, was notified to appear for a formal investigation on August 18, 2006 in connection with his conviction on drug-related felony charges on September 15, 2005. Following mutually agreed upon postponement, that investigation was ultimately held on August 24, 2006, with Claimant *in absentia*. By letter dated September 5, 2006, Carrier informed Claimant that he was dismissed from employment for violation of BNSF PEPA Policy, Appendix C, Item #3 (Conduct leading to a felony conviction) and Rule S-28.6 (Conduct Item 4 and 5) of the BNSF Mechanical/PM Safety Rules and Policies, effective October 30, 2005.

Based upon careful review of the record in its entirety, the Board concludes Carrier's action was procedurally regular in all respects. With respect to the merits, Claimant's off-duty conduct satisfied well-established standards requiring a nexus with the employer's business, having a potentially significant impact on the safety of the railroad's operations as well as the well-being of Claimant's fellow employees. In light of those considerations, and given Claimant's past record, the penalty of dismissal was warranted.

### 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.

**Form 1**  
**Page 3**

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

**Dated at Chicago, Illinois, this 25th day of November 2008.**