

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40973
Docket No. MW-41320
11-3-NRAB-00003-100220**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Montana Rail Link, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. M. Burrell by letter dated September 2, 2009, which followed a fact-finding session on August 18, 2009 concerning his alleged violations of Montana Rail Link General Code of Operating Rules 1.6, 1.7 and General Safety Rule G-1 1(f)(h) in connection with an incident (roll of toilet paper striking his supervisor) that occurred at approximately 5:55 A.M. on July 30, 2009 at the Big Timber Section House was arbitrary, capricious, unwarranted and in violation of the Agreement (System File MRL-244-M).**
- (2) As a consequence of the violation referred to in Part (1) above, ‘. . . we are requesting that M. F. Burrell be returned to service and his record be cleared of the charges and proceedings of this fact-finding. We further request that Mr. Burrell be made whole of any loss of wages, loss of overtime and fringe benefits, including but not limited to, insurance, railroad retirement credit, flex time, etc.’”**

FINDINGS:

The Third 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 for the Rule violations noted in the Statement of Claim. At the time of the incident, the Claimant had less than three years of service with the Carrier. His prior record contained three disciplinary entries, two of which occurred in the four months before the incident in question. Of note, the Claimant was assessed a 30-day suspension for lying to a different supervisor and other factors just three days prior to the incident in question.

Our review of the record does not reveal any procedural shortcomings in the handling of the Investigation or the appeal process on the property. On the merits, it is undisputed that the Claimant knew the section house building had been out of toilet paper for two or three days prior to the morning of July 30, 2009. It was within the Claimant's responsibilities as a Foreman to either obtain replacement supplies or notify his chain of supervision of the outage. He did neither. When a Projects Supervisor learned of the situation that morning, he left the building and purchased several four-packs and placed them on the corner of the Claimant's desk before moving away about 15 feet to discuss manpower requirements with another Assistant Foreman. Moments later, the Claimant grabbed one of the 4-packs and threw it at the Supervisor. The package hit the Project Supervisor on the side of his face.

Although the Claimant maintained that his throw was just joking or horseplay, testimony from other crew members who were present describe an

intentional throw with some force. The Claimant admitted he intended to hit the Project Supervisor although not on the side of his face.

It is clear that Carrier Rules prohibit any kind of practical jokes or discourteous conduct. The Claimant admitted his conduct was wrong. Given the nature of the misconduct in question, as well as the Claimant's prior disciplinary infractions, the Carrier's disciplinary decision was reasonable.

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 Third Division

Dated at Chicago, Illinois, this 14th day of April 2011.