

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41514
Docket No. MW-41901
13-3-NRAB-00003-120082**

The Third Division consisted of the regular members and in addition Referee Dr. Lou Imundo when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level S and a three (3) year review period commencing September 23, 2010] imposed by letter dated September 23, 2010 and the discipline [Level S thirty (30) day road (sic) suspension and a three (3) year revision period commencing September 23, 2010] imposed by letter dated September 24, 2010 upon Mr. S. Gustafson for alleged violation of EI 2.2.3 Authority and Responsibility of Inspectors and EI 2.4.4 Safety and Protection During Inspections in connection with alleged failure to detect irregular surface conditions, including but not limited to line swing and track deviations and alleged failure to apply proper remedial actions to these surface conditions, left behind by the high-speed surfacing unit SC-31 after the MDZ-2000 machine (09-3X) was extricated from the track while working a[t] curve 188 on the Jamestown Subdivision on July 9, 2010, which allegedly contributed to the derailment of train C-ABMBEN1-23A on July 10, 2010 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File T-D-3814-H/11-11-0006 BNR).**

- (2) As a consequence of the violation referred to in Part (1) above, ‘***
The Carrier must remove any and all mention of the discipline
from Mr. Gustafson’s record immediately.’”

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 Investigation was fair and impartial.

The Claimant failed to do his job properly to protect the track and this was a contributing factor, if not the major factor, in the resulting derailment.

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 19th day of February 2013.