

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41569
Docket No. MW-41834
13-3-NRAB-00003-120099**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The level of discipline [Level S thirty (30) day record suspension and a three (3) year review period commencing on October 27, 2010] imposed upon Mr. E. Yalowizer by letter dated October 27, 2010 for alleged violation of MOWOR 1.1.2, MOWOR 1.11 Sleeping and MOWOR 1.11.1, in connection with charges of sleeping while on duty, in a reclined position with eyes closed, at approximately 1315 hours on September 22, 2010 at/or near Mile Post 586.3 off Main Track 2 near Highway 14/16 on the Blackhills Subdivision, while assigned as GP2 Loader Operator headquartered in Gillette, Wyoming was arbitrary, capricious, excessive and in violation of the Agreement (System File C-11-D040-2/10-11-0033 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the aforesaid discipline shall now be removed from Claimant E. Yalowizer’s personal record.”**

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.

It is evident that the Claimant intended to sleep on the job. There is no substantive evidence to support the Organization's claim of disparate treatment.

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 18th day of March 2013.