

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41573
Docket No. MW-41864
13-3-NRAB-00003-120134**

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 discipline (withheld from service by letter dated February 2, 2010 and subsequent dismissal by letter dated March 5, 2010) imposed upon Mr. W. Olson for alleged violation of MOWOR 1.13 Comply with Instructions, MOWOR 1.15 Reporting or Absence and MOWOR 1.6 Conduct in connection with charges of failure to comply with instructions to plow snow between Grizzly and Spotted Robe and leaving his assigned position without authority and falsification of time roll on January 29, 2010 while working on the Hi Line Subdivision was arbitrary, capricious, excessive and in violation of the Agreement (System File B-M-2142-M/11-10-0200 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant W. Olson shall now receive the remedy prescribed by the parties in Rule 40(G).”**

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 record clearly shows that the Carrier had just cause to discipline the Claimant for the charged misconduct. However, given the facts and circumstances pertaining to and surrounding the Claimant's actions in conjunction with his long term discipline-free work record, the dismissal was arbitrary and capricious. The appropriate discipline is for the dismissal to be rescinded and reduced to a suspension without pay.

The Claimant is to be reinstated without loss of seniority or benefits and returned to work as soon as practical.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of March 2013.