

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41576
Docket No. MW-41877
13-3-NRAB-00003-120171**

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 thirty (30) day record suspension and a three (3) year review period] imposed upon Mr. R. Valencia by letter dated November 15, 2010 for alleged violation of MOWOR 2.14.2 Before Reporting Clear of Authority Limits in connection with charges of not informing the train dispatcher that all employees and multiple work groups using the authority were clear of track before reporting clear of authority limits at approximately 0900 hours on September 7, 2010 at about Mile Post 35 on the Chicago Subdivision while assigned as track inspector was arbitrary, capricious and in violation of the Agreement (System File C-11D040-7/10-11-0108 BNR).

(2) As a consequence of the violation referred to in Part (1) above, Claimant R. Valencia 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 Claimant's rights were violated because he was not accorded a fair and impartial Investigation.

AWARD

Claim sustained.

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.