

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41790  
Docket No. MW-41876  
13-3-NRAB-00003-120166**

The Third Division consisted of the regular members and in addition Referee Louis V. Imundo, Jr. when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
PARTIES TO DISPUTE: (  
(BNSF Railway 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 one (1) year review period] imposed upon Mr. C. Whitman for alleged violation of MOWOR 1.1.2 Alert and Attentive and MOWOR 6.50.3 Equipment Components Clear for alleged failure to be alert and attentive when operating a ballast regulator which damaged a switch heater at/or near Mile Post 4.5 on the Angora Subdivision on October 15, 2010 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C-11-D040-13/10-11-0146 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Whitman 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:

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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.

**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 17th day of December 2013.