

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41507
Docket No. MW-41799
13-3-NRAB-00003-120011**

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 Atchison, Topeka
(and Santa Fe Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s discipline [Level S thirty (30) day record suspension with three (3) year probation] of Mr. B. Jones, issued by letter dated July 8, 2010, alleging a violation of MOWOR 1.6 Conduct in connection with his alleged writing of racial comments concerning a fellow employee in November of 2009 was arbitrary, capricious, unwarranted and without merit (System File F-10-04D/13-10-0018 ATS).**
- (2) As a consequence of the violation referred to in Part (1) above, the Organization respectfully requests that the aforesaid discipline shall now ‘. . . be rescinded in its entirety and wholly expunged from Mr. Jones’ personal record, and that he shall be compensated for any and all wage loss suffered, to include travel time and mileage from his RSG headquarters point on June 17, 2010, to the location of the hearing in Amarillo, Texas.’”**

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 delay in the Investigation did not adversely affect the outcome.

The change in the police handwriting expert did not adversely affect the process or the results of the Investigation.

There was compelling circumstantial and solid evidence to prove the Claimant's guilt.

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.