

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 41509  
Docket No. MW-41813  
13-3-NRAB-00003-120054

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

(Brotherhood of Maintenance of Way Employes 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 30 day record suspension and a one (1) year review period] imposed upon Mr. J. Lipes by letter dated October 15, 2010 for alleged violation of Maintenance of Way Operating Rule (MOWOR) 1.1.2 Alert and Attentive and MOWOR 1.6 Conduct on September 10, 2010 at approximately 1400 hours at Mile Post 50 on the Peoria Sub, when the BNSF Vehicle #14618 he was operating was involved in a vehicle accident hitting the welders truck, damaging the fender on the section truck, was arbitrary, capricious, unwarranted, and in violation of the Agreement (System File C-11-D040-4/10-11-0035 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now remove the aforesaid discipline from Claimant J. Lipes’ 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.

There was substantial record evidence to support the conclusion that the Claimant failed to remain alert and attentive and, as a result, his vehicle was involved in an accident. We do not find that the discipline assessed was arbitrary or capricious. Accordingly, the discipline will not be disturbed.

**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.