

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41510
Docket No. MW-41814
13-3-NRAB-00003-120061

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 Employees Division -
(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 [Level S thirty (30) day record suspension and a three (3) year review period] imposed upon Mr. A. Vahrenkamp by letter dated December 2, 2010 for alleged violation of MOWOR 1.1.2 Alert and Attentive and MOWOR 11.3 Fouling the Track when the front door of Vehicle Number 21264 was struck by a car on a passing train causing the door to be bent back and the window broken out, on September 29, 2010 at approximately 1400 hours at/or near Mile Post 358 on the Sandhills Subdivision while working as a grinder operator on Gang TRW X0004 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C-11-D040-3/10-11-0034 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now remove the aforesaid discipline from Claimant A. Vahrenkamp’s 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.

The Organization argues that the Carrier violated the Claimant's Rule 40A and 40C procedural rights. The Organization asserted that the Carrier violated the Claimant's Rule 42A right to an investigatory process, which involved reasons being given for sustaining the discipline.

Without prejudicing those positions the Organization asserted that there were no bases in fact to discipline the Claimant for violating either MOWOR 1.1.2 or MOWOR 11.3.

The record establishes that the Carrier failed, by any standard whatsoever, to prove its case for the Claimant's having violated either MOWOR 1.1.2 or MOWOR 11.3.

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 19th day of February 2013.