

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41567
Docket No. MW-41804
13-3-NRAB-00003-120060

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 of the 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 one (1) year probation period commencing on October 6, 2010] imposed upon Mr. A. Koss by letter dated October 6, 2010 for alleged violation of MOWSR S-1.2.3, MOWSR S-12.9.1 and MOWSR S-16.24 for alleged failure to be alert and attentive when parking BNSF Vehicle #21225 which was subsequently damaged when it was backed into by an excavator on August 25, 2010 at/or near Mile Post 345.6 on the Sandhills Subdivision while assigned as a foreman on Gang TMGX 1338 temporarily headquartered at Alliance, Nebraska was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C-10-D040-41/10-10-0571 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Koss 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 Organization asserts that the Claimant was denied a fair and impartial investigation. The Organization further asserted that the Carrier failed to prove the charges levied against the Claimant.

It is evident that the Carrier did not comply with Rule 40's requirements and in so doing prejudiced the Claimant's right to a fair and impartial Hearing.

In view of this fact, the issue of just cause is moot.

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.