

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41570  
Docket No. MW-41836  
13-3-NRAB-00003-120103**

**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 Employes**  
**(Division of the 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 Carrier’s May 17, 2010 decision to disqualify Mr. D. Scarberry from his awarded position on Locomotive Crane BN 975428 was unjust, improper and in violation of the Agreement (System File C-10-D090-2/10-10-0433 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the aforesaid disqualification of Claimant D. Scarberry shall now be overturned and ‘. . . the Claimant’s Group 1 Machine Operator date of April 15, 2010, be reinstated, and that the Claimant be paid for all straight time and overtime hours lost at the Group 1 Machine Operator rate, beginning May 17, 2010, and continuing until this issue is resolved, as settlement of this claim.”**

**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 Carrier acted correctly when it disqualified the Claimant and in so doing did not violate the Agreement.**

**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 18th day of March 2013.**