

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41571
Docket No. MW-41838
13-3-NRAB-00003-120113**

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 August 27, 2010 decision upholding the disqualification of Mr. D. Scarberry as a crane operator was unjust, on the basis of unproven allegations and in violation of the Agreement (System File C-10-D090-4/10-0542 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the disqualification of Claimant D. Scarberry shall now be overturned and he shall be placed back on the crane operator position in question and he shall be given the appropriate Group 1 seniority date.”**

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.