

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41574
Docket No. MW-41874
13-3-NRAB-00003-120143**

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 (dismissal) imposed upon Mr. P. Bohnenkamp by letter dated December 7, 2010 for alleged violation of MOWOR 1.6 and 1.4, MOWSR 1.2.9, 1.5, 1.51, 1.52 and the Work Place Harassment Policy in connection with alleged failure to maintain his assigned Company Vehicle #22901 in a clean and orderly condition and alleged quarrelsome and discourteous behavior toward Supervisor Roadmaster K. Steinke regarding his expectations as they applied to the condition of said vehicle on November 12, 2010 at or near Mile Post 42.5 on the Orin Subdivision, while assigned as a foreman on Gang TSCX0429, temporarily headquartered in Gillette, Wyoming was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C-11-D070-4/10-11-0103 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant P. Bohnenkamp 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 Board finds that the Carrier did not violate Rule 40. Furthermore, the Carrier did not prejudice the Claimant. The Board finds that the Carrier did not have good and sufficient reason to remove the Claimant from service prior to the Hearing. However, this error did not unfavorably prejudice the Investigation or its outcome.

The Board finds that the Carrier had sufficient evidence to support all charges against the Claimant. The genesis for most of what occurred between the Claimant and the Roadmaster on November 12, 2010 was the Claimant's disrespect for the Roadmaster.

Although this was the Claimant's second Level S violation within a 36 month review period, the Board finds that in view of his 32 years of service with the Carrier, dismissal was too harsh a penalty. The dismissal is hereby rescinded and reduced to a suspension. The Claimant is to be reinstated without loss of seniority or benefits and returned to work as soon as possible. The Claimant is not entitled to any backpay.

AWARD

Claim sustained in accordance with the Findings.

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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.