

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41577  
Docket No. MW-41907  
13-3-NRAB-00003-120145**

**The Third Division consisted of the regular members and in addition Referee Dr. Lou Imundo when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
( 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 by letter dated December 21, 2009 upon Mr. D. Cassidy in connection with a positive return to duty breath test and charges of alleged violation of BNSF Railway Policy on the use of Alcohol and Drugs and MOWOR 1.5 Drugs and Alcohol while allegedly assigned as laborer working on the Kootenai River Subdivision on July 14, 2009 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File S-P-1470-C/11-10-0171 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Cassidy 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.

The Board carefully reviewed the record evidence and finds that there is no merit to the Organization's allegations and assertions. The Carrier had just cause to discharge the Claimant for the charged misconduct.

**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.