

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42262
Docket No. MW-41685
16-3-NRAB-00003-110303**

The Third Division consisted of the regular members and in addition Referee Louis V. Imundo, Jr. when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level S thirty (30) day suspension and one (1) year probationary period] imposed upon Mr. B. Longsine by letter dated June 30, 2010, for alleged violation of MOWOR 1.6 Conduct, MOWOR 6.50 Movement of on-track equipment and MOWOR 6.51 Maintaining a safe braking distance, for alleged failure to maintain a safe distance between Tripp Machine X6300194 and Undercutter Tool Car BNSF 927039, resulting in a collision and alleged failure to wear seat belt and alleged dishonesty on April 19, 2010 at/or near Mile Post 47.3 on the Valley Subdivision while working as a Group 3/4 Machine Operator on Gang TUCX0008 was arbitrary, unwarranted, on the basis of unproven charges and in violation of the Agreement (System File C-10-D040-34/10-10-0440 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Level S thirty (30) day record suspension with a one (1) year probation discipline shall be removed from Mr. B. Longsine’s record.”**

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 determined that the on-property record does not contain sufficient evidence to support the charge of dishonesty. However, the record establishes that the Claimant did not operate Tripp Machine X6300194 in a safe manner on the day in question and, as a result, collided with the tool car that was attached to the rear of the undercutter. The record does not establish that the Claimant was not wearing a seat belt at the time of the collision. The Claimant violated MOWOR 6.50 Movement of on-track equipment and MOWOR 6.51 Maintaining a safe backing distance, but did not violate MOWOR 1.6 Conduct. The Level S 30-day record suspension and one-year probationary period was appropriate and will not be disturbed. Accordingly, the claim must be denied.

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 21st day of April 2016.