

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42264
Docket No. MW-41802
16-3-NRAB-00003-120026**

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 record suspension and a one (1) year review period commencing on September 14, 2010] imposed upon Mr. K. Heim by letter dated September 14, 2010 for alleged violation of MOWOR 1.1.1, MOWOR 1.1.2 Alert and Attentive and MOWSR S-1.5.3 for alleged failure to comply with instructions and alleged failure to be alert and attentive in connection with an injury to his left foot when the rail rolled at/or near Mile Post 117.5 on the Canyon Subdivision on May 17, 2010 while he was assigned as an extra gang trackman on Gang TRPX0004 temporarily headquartered at Douglas, Wyoming, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C-10-D040-39/10-10-0545 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. Heim shall now receive the remedy prescribed by the parties in Rule 40G.”**

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 failed to meet the burden of proof required in this matter. Accordingly, the claim must be sustained.

AWARD

Claim sustained.

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 21st day of April 2016.