

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42266
Docket No. MW-41812
16-3-NRAB-00003-120049**

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 resulting dismissal] imposed upon Mr. J. Johnson by letter dated August 12, 2010 for alleged violation of MSRP S-28.1.3 Accidents, Injuries and Defects and MSRP S-28.2.5A Reporting – Injuries to Employees for alleged failure to immediately report an incident/injury on March 22, 2010 at approximately 1000 hours while assigned as a maintenance welder at the Guernsey Diesel Servicing Facility in Guernsey, Wyoming was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C-10-D070-12/10-10-0527 BNR).**
- (2) The discipline (dismissal) imposed upon Mr. J. Johnson by letter dated September 2, 2010 for alleged dishonest conduct in reporting the facts of an incident/injury that occurred on April 13, 2009 and then allegedly stating that said incident/injury was reported to have occurred on April 14, 2009 to BNSF supervision with alleged first knowledge of alleged dishonest conduct on March 22, 2010 at approximately 1000 hours while assigned as a maintenance welder at the Guernsey Diesel Servicing Facility in Guernsey, Wyoming was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C-10-D070-13/10-10-0526).**

(3) As a consequence of the violation referred to in Part (1) above, Claimant J. Johnson shall now receive the remedy prescribed by the parties in Rule 40G.

(4) As a consequence of the violation referred to in Part (2) above, Claimant J. Johnson 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 prove that the Claimant delayed in reporting his injury; that he changed the essential facts when he resubmitted his injury report; that the date change of one day was significant; and that he was dishonest in any way whatsoever.

In view of the foregoing, the assessed disciplinary actions are hereby rescinded and any mention of them is to be expunged from the Claimant's records. The Claimant shall be reinstated without any loss of seniority or benefits and returned to service. In addition, the Claimant is entitled to be compensated for all lost wages including any overtime that he would have been offered and likely would have worked during the period from the date of his improper dismissal to the date that he is returned to service. Any monies earned or paid to the Claimant, except earnings from investments and income streams that he was receiving before he was dismissed from other sources that continued after his dismissal, are to be deducted from the lost wages owed to him. The Claimant is further entitled to be reimbursed for any and all out-of-pocket healthcare expenses that he incurred during the aforementioned period, which would have been covered by the Carrier-provided healthcare insurance plan coverage that he was under at the time of his dismissal.

The Claimant is hereby directed to fully cooperate with the Carrier in providing relevant requested information pertaining to monies paid or earned and out-of-pocket healthcare costs incurred during the aforementioned timeframe. Failure to fully cooperate in providing relevant requested information will nullify the claim for monies owed. Any proven withholding or falsification of relevant requested information will also nullify the claim for monies owed.

AWARD

Claim sustained in accordance with the Findings.

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.