

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42267  
Docket No. MW-42007  
16-3-NRAB-00003-120330**

**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 with a three (3) year review period that commences on April 11, 2011] imposed upon Mr. B. Finley by letter dated June 6, 2011 for alleged violation of MOWSR 1.2.3 Alert and Attentive and MOWSR 20.2.1 Overhead and Side Obstructions in connection with charges of failure to be alert and attentive while operating the TP 06 Grapple Truck resulting in a collision with a bridge at or near Mile Post 238.8 Dakota Ave. on the Ottumwa Subdivision at approximately 1315 hours on April 11, 2011 was arbitrary, capricious, unwarranted and in violation of the Agreement (System File C-11-D040-29/10-11-0506 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Finley 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 provided sufficient evidence to prove that the Claimant violated MOWSR 1.2.3 and MOWSR 20.2.1. Accordingly, the claim is without merit and 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.