

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42270
Docket No. MW-42141
16-3-NRAB-00003-120407**

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 (dismissal) imposed upon Mr. S. Pederson by letter dated July 18, 2011 for alleged violation of MOWOR 1.15 Duty Reporting or Absence and MOWOR 1.6 Conduct – Falsification of Payroll Hours in connection with allegedly leaving his assigned foreman position without proper authority at approximately 1030 on June 10, 2011 and alleged falsification of time roll was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File B-M-2413-M/11-11-0379 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Pederson 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.

At the heart of any contemplated disciplinary action is the irrefutable fact that the Carrier must first conduct a fair and impartial Investigation.

The notion of fairness requires that the charged employee and his Organization representative know in advance the witnesses who the Carrier intends to have testify at the Hearing. The Organization must also be allowed to cross examine the Carrier's witnesses and to present its own witnesses.

Rule 40 memorializes the requirements and procedures to be followed in the Investigation and appeals process. It was crafted by skilled negotiators for the Carrier and the Organization. Its language has very clear intent, meaning and application. It is not surplusage and in order to retain its meaning there must be consequences for the Party who ignores it. Repeated failures to comply with Rule 40's provisions render them meaningless and unenforceable.

In this case, the Board found a number of violations of Rule 40. For this reason alone, the claim must be sustained. Given the foregoing, there is no need to address the Organization's contention that well-established past practice supported the Claimant's action.

The Claimant's dismissal is hereby rescinded and any mention of it is to be expunged from his records. The Claimant shall be reinstated without any loss of seniority or benefits and returned to service. In addition, the Claimant is entitled to compensation for all lost wages including any overtime that he would have been offered and likely would have worked 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.