

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42274  
Docket No. MW-42273  
16-3-NRAB-00003-130252**

**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 Agreement was violated when the Carrier terminated all of the Maintenance of Way seniority established by Mr. J. Johnson by letter dated prior to December 28, 2011 (System File T-D-4068-W/11-12-0173 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now restore all of Claimant J. Johnson’s seniority and restore him to service and he shall now be “\*\*\* made whole for any and all losses beginning Monday, December 19, 2011. We specifically request that Claimant receive eight (8) hours straight time pay, per work day (Monday through Friday), beginning December 21, we request that Claimant receive compensation for any and all holidays, beginning December 21, and we request that Claimant receive pay for any and all overtime worked on position 32045 on gang id TINS0150 beginning December 21, 2011 and continuing until January 8, 2012 and we request that Claimant receive pay for any and all overtime worked on position 32045 on gang ID TINS0150 beginning December 21, 2011 and continuing until January 8, 2012. We further request that all time lost from January 9, 2011 (sic), on position 07344 on Gang TTPX0011, onward, be accredited Claimant for Railroad Retirement, vacation, and all insurance accreditation.”**

**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.

Even though Rule 9 is self-executing, the fact that the Roadmaster permitted the Claimant to return to work constituted a de facto waiver of the application of the Rule, which enabled the Claimant to retain his seniority as a consequence of the unique circumstances contained in the on-property case record.

The Claimant's termination is hereby rescinded and any mention of it is to be expunged from his personnel 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 termination 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 terminated from other sources that continued after his termination, are to be deducted from the lost wages owed to him. In addition, the Claimant is 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 termination.

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.