

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42279
Docket No. MW-42559
16-3-NRAB-00003-140232**

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 Track Inspector J. Wilson by letter dated August 6, 2012 for his alleged violation of EI 2.9.1 Hot Weather, MOWOR 1.13 Reporting and Complying with Instructions, MOWOR 1.6 Conduct and CFR 213.118 Procedures for the Installation, Adjustment, Maintenance and Inspection of CWR as required by CFR 213.118, in connection with his alleged ‘. . . failure to comply with instructions regarding inspection requirements under hot weather conditions, failure to identify and report track conditions that resulted in derailment of 31 coal cars on train C NAMRBE052 at MP 119.5 on the Lakeside Subdivision on July 2, 2012, and dishonesty in reporting information about inspections conducted on July 2, 2012 between the hours of 1200 and 2000 on the Lakeside Subdivision between Switch Glade and Beatrice, while you were working as Track Inspector.’ was on the basis of unproven charges, without merit, excessive and in violation of the Agreement (System File S-P-1665-C/11-13-0022 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant Wilson’s record shall be cleared of the charge leveled against him, he shall be returned to service with seniority and other rights unimpaired and he shall be made whole for any and all losses he suffered as a result of this investigation, including wages, benefits and other.”**

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 charges against the Claimant are most serious. The record shows that the Carrier did not have sufficient evidence to conclusively prove that the Claimant's actions, or lack thereof, on the day in question caused the derailment. While there is no doubt that the involved track buckled, it is entirely possible that it buckled after it had been inspected. The Claimant was responsible for inspecting a large section of track. Clearly, he could not have been everywhere at the same time.

There is some ambiguity in the record with respect to whether extra heat patrols were needed on the day in question. The Carrier provided no evidence to show that the ambient temperature was exceeded at the time and location from where the Claimant's normal work ended and he went home. Based on the record evidence, the Claimant had good reason to believe that the ambient temperature threshold for additional heat patrols had not been exceeded. Accordingly, he felt there was no need to continue making heat patrols after his normal work day ended. The record shows that the derailment occurred at 6:50 P.M. after the Claimant's regular work day ended at 3:00 P.M. and even if he had continued doing heat inspections, there is nothing in the record to prove that had he stayed on the job he would have seen the buckled track before the derailment. The Claimant had some 20 years of service with the Carrier. He became a Track Inspector in 2004 and there is nothing in the record to indicate that he was not a competent, conscientious employee.

The Board believes that the conditions under which the Claimant was called back to work after the derailment were not ideal for him with respect to his being able to give a complete and accurate accounting of his work activities that day. The fact that he was interviewed between five and eight times by various Carrier Officials

suggests that he was badgered. The Board does not believe that the Claimant's failure to have accurate recall regarding the timelines was an intentional act to deceive the Carrier. Clearly, he had to have known that the GPS would accurately show where his vehicle, and presumably he was throughout the day. The record also establishes that the Carrier's preliminary investigation was not properly conducted. The information gleaned from the preliminary investigation was the basis for the decision to blame him for the derailment.

In the final analysis, the Board finds that the Carrier failed to prove its case against the Claimant.

In view of the foregoing, the Claimant's dismissal 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 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. In addition, the Claimant is entitled to be reimbursed for any and all out-of-pocket healthcare related 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.