

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42280  
Docket No. MW-42584  
16-3-NRAB-00003-140264**

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 a one (1) year review period] imposed upon Mr. M. Gordon for alleged violation of EI 9.1.4 Maintaining Turnouts in connection with charges of alleged failure to properly protect a worn switch point and missing braces which caused Train L MON 8241G to derail two (2) cars in the Shelby Yard, Mile Post 1065.95 at approximately 1240 hours on Sunday, October 21, 2012 while assigned as a Track Inspector for Shelby Yard Limits was arbitrary, capricious and in violation of the Agreement (System File B-M-2645-E/11-13-0141 BNR).**
- (2) The claim as appealed by General Chairman B. G. Glover on May 14, 2013 to Mr. W. A. Osborn, General Director Labor Relations, shall be allowed as presented because said appeal was not disallowed by Mr. W. A. Osborn in accordance with Rule 42A.**
- (3) As a consequence of the violation referred to in Part (1) and/or (2) above, Claimant M. Gordon shall now have his record ‘\*\*\* cleared of the charges, proceedings, and discipline assessed in this case.’”**

**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.

In view of the findings set forth in Public Law Board No. 7564, Award 44, which upheld the dismissal of the Claimant, the instant claim is moot and must be dismissed.

**AWARD**

Claim dismissed.

**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.