

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42284  
Docket No. MW-42702  
16-3-NRAB-00003-140378**

**The Third Division consisted of the regular members and in addition Referee Louis V. Imundo, Jr. when award was rendered.**

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
(  
(BNSF Railway Company

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline [Standard Formal Reprimand and a One (1) Year Review Period] imposed upon Track Inspector T. Bailey by letter dated February 12, 2013 for alleged violation of EI 4.5 Placing Temporary Speed Restrictions on Track Not Meeting BNSF or FRA Standards in connection with his alleged ‘. . . failure to properly protect a wide gauge defect at MP 1089.2 Cut Bank Yard Track which could have prevented a two locomotive derailment at approximately 1515 hours on Saturday, December 1, 2012 while assigned as Track Inspector working on the Hi Line Subdivision.’ was on the basis of unproven charges and in violation of the Agreement (System File B-M-2658-E/11-13-0191 BNR).**
- (2) As a consequence of the violation(s) referred to in Part (1) above, Claimant T. Bailey’s record shall ‘. . . be cleared of the charges, proceedings and the discipline assessed in file number MOW-MON-2012-00707.’”**

**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.

Pursuant to Rule 40 of the Parties' Agreement, the Carrier is obligated to conduct a thorough, fair and impartial Investigation where corrective action is contemplated. Embodied within the concept of fair and impartial is that in order to properly represent employees charged with violating Carrier Rules and/or Policies, the Organization must be provided with relevant requested information in a timely manner. When the Carrier refuses or delays in providing such information, the Investigation process is tainted and may be fatally flawed. Additionally, the Investigation process is supposed to be cooperative and not adversarial. When the process becomes adversarial, distrust increases, participants' positions become inflexible, tensions increase, and people are prone to stop listening to one another.

In this case, the Board has determined that the Carrier failed to conduct a fair and impartial Investigation and, in so doing, violated Rule 40. The discipline (Standard Formal Reprimand and One (1) Year Review Period) assessed the Claimant is hereby rescinded and any mention of it is to be expunged from his records.

**AWARD**

Claim sustained.

**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.