

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42291
Docket No. MW-42774
16-3-NRAB-00003-140493**

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 one (1) year review period] imposed upon Mr. D. Wivholm by letter dated June 5, 2013 for alleged violation of MOWSR S-12.8 Backing – 12.8.1 Vehicles in connection with charges of alleged failure to protect the movement of a Company vehicle on April 11, 2013 when assigned as a Group 2 machine operator near Karlsruhe, North Dakota was on the basis of unproven charges, excessive and in violation of the Agreement (System File T-D-4240-M/11-13-0252 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Wivholm shall ‘. . . have the discipline immediately removed from his record, and his record cleared of any reference to any of the discipline set forth in the letter received by the Organization on June 8, 2013 letter from Steve Lyne. Also he be paid for the pay lost to attend the investigation.’”**

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 Carrier failed to prove by substantial evidence that the Claimant was negligent while he was backing up the loader. As a consequence, the discipline assessed the Claimant must be rescinded and any mention of it must be expunged from his personnel records.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.