

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42292
Docket No. MW-42827
16-3-NRAB-00003-150016**

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 Foreman D. Maley by letter dated August 14, 2013 for her alleged violation of ‘ . . . EI G.5.4 Disposing of Ties, Creosote, and Creosote/Borate-Treated, MWOR 1.3.1 Rules, Regulations, and Instructions, MWOR 1.4 Carrying Out Rules and Reporting Violations, MWOR 1.6 Conduct, MWOR 1.13 Reporting and Complying with Instructions and MWOR 1.25 Credit or Property.’ in connection with her alleged ‘ . . . theft; getting rid of railroad property without proper authority; dishonesty; insubordination; failure to cooperate and assist in the carrying out of rules and instructions; failure to comply with instructions from a Supervisor; and failure to comply with Engineering Instructions regarding the disposal of treated materials on approximately July 9, 2013, at or near BNSF Skykomish Material Storage Area, 201 East Railroad Avenue, Skykomish, Washington 98288.’ was on the basis of unproven charges, excessive and in violation of the Agreement (System File S-P-1757-G/11-13-0342 BNR).**
- (2) As a consequence of the violations referred to in Part (1) above, Claimant D. Maley shall be reinstated to service with seniority and other rights unimpaired, her record cleared of the charges leveled against her and she shall be compensated for all losses including but limited to wages and benefits.”**

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 instant case is a companion to the Organization's claims on behalf of Truck Driver C. Lee, which were adjudicated by the Board in Third Division Awards 42293 and 42294.

Distilled to its essence, the record evidence in the instant case reveals that the Carrier met its burden of proof. The discipline assessed was appropriate. Accordingly, the claim before the Board lacks merit and must be denied.

AWARD

Claim denied.

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.