

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42294  
Docket No. MW-42877  
16-3-NRAB-00003-150014**

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 Truck Driver C. Lee by letter dated September 10, 2013 for his alleged violation of MWOR 1.4 Carrying Out Rules and Reporting Violations, MWOR, 1.6 Conduct and HR 90.2 Workplace Harassment Policy in connection with his alleged ‘... dishonest, immoral and hostile conduct; verbal or physical conduct by an employee which harasses, disrupts or interferes with another’s work performance or which creates an intimidating, offensive or hostile environment; and failure to assist in the carrying out of rules and instructions, when you maliciously conspired against another employee, while working as Truck Driver (TUCX0004), on approximately July 9, 2013, at or near Skykomish, Washington.’ was on the basis of unproven charges, without merit, excessive and in violation of the Agreement (System File C-13-D070-19/10-13-0613 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the discipline imposed upon Claimant C. Lee shall be overturned and he shall be reinstated to service in accordance with Rule 40.”**

**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 Foreman D. Maley and Claimant Truck Driver C. Lee, which were adjudicated by the Board in Third Division Awards 42292 and 42293, respectively.

Suffice to say, the Board finds no credible, substantive evidence in the instant case record to support any of the charges against the Claimant. Accordingly, the Claimant's September 10, 2013 dismissal is hereby overturned. The remaining aspects of the claimed remedy were addressed in Award 42293 and are incorporated herein by reference.

**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.