

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42300  
Docket No. MW-42215  
16-3-NRAB-00003-130185**

**The Third Division consisted of the regular members and in addition Referee Richard K. Hanft when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
( Division – IBT Rail Conference  
PARTIES TO DISPUTE: (  
(Norfolk Southern Railway Company**

**STATEMENT OF CLAIM:**

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

- (1) The Carrier's discipline (dismissed from all services with Norfolk Southern Railway Company) of Mr. J. East, issued by letter dated November 30, 2010, in connection with his allegedly making false and conflicting statements in his report of falling on October 18, 2010 was based on unproven charges, unjust, unwarranted and in violation of the Agreement (Carrier's File MW-ROAN-10-33-LM-425 NWR).**
- (2) As a consequence of the Carrier's violation referred to in Part (1) above, Claimant J. East shall be granted the remedy in accordance with Rule 30(d)."**

**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 Claimant had established and held seniority within the Carrier's Maintenance of Way Department. On the date giving rise to this dispute, he was assigned and working as a Trackman.**

**On October 18, 2010, the Claimant was reaching into a tool bin in a work truck to access a saw blade when he allegedly slipped and fell backwards, landing on a piece of rail and thereby injuring himself. The Claimant's alleged injury was soon observed by co-workers, at which time the Carrier sent him to receive medical attention.**

**By letter dated October 29, 2010, the Carrier summoned the Claimant to an Investigation to determine whether he made false and conflicting statements during the course of interviews which he submitted to regarding his accident/injury. The Investigation was held on November 17, 2010.**

**By letter dated November 30, 2010, the Carrier found the Claimant guilty as charged and dismissed him. By letter dated December 14, 2010, the Organization filed a claim on the Claimant's behalf, disputing said discipline. The Carrier denied that claim by letter dated January 7, 2011.**

**The decision reached on the property was the result of a lack of accord between the Claimant's version of what happened immediately preceding the injury and the statements of other crew members working with the Claimant at the time of the accident. No members of the crew actually saw the Claimant fall.**

**What the fellow crew members did testify to, however, was that the oil bottle that was supposedly inadvertently knocked out of the bin that the Claimant retrieved his chaps from is customarily stored in a different bin on the truck. The Claimant avers that oil spilled onto the wheel that he stepped onto in order to reach into a bin on the truck, causing him to slip and fall backwards onto a rail. Because other crew members testified that the oil was not customarily stored in the same bin as the chaps and saw blades, the Hearing Officer found the statements of all the other crew members more credible than the Claimant's testimony.**

The Board finds that while employees have an obligation to be forthright when reporting work-related injuries and the Claimant's explanation of the circumstances leading to his injury were inconsistent with his fellow crew members' statements, there was no direct evidence in the record to disprove the Claimant's explanation of how the accident occurred. Hence, the decision made on the property lacked substantial evidence to prove the charge of making false and conflicting statements in regard to his injury and cannot stand.

**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 15th day of June 2016.