

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 42303  
Docket No. MW-42139  
16-3-NRAB-00003-120402

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 Mr. D. Gonzales by letter dated June 3, 2011 for alleged ‘. . . violation of MOWOR 1.15 Duty Reporting or Absence and MOWOR 1.6 Conduct – Employees must not be . . . 4. Dishonest.’, in connection with charges of releasing himself and his crew from duty on April 14, 2011 at approximately 1200 hours and charges of falsification of time for himself and his crew for claiming eight (8) straight time hours for April 14, 2011 was arbitrary, capricious, unjust and in violation of the Agreement (System File S-P-1601-G/11-11-0316 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Gonzales shall now receive the remedy prescribed by the parties in Rule 40(G).”**

**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.

In disciplinary action cases the Carrier must prove two things in order to have the disciplined upheld by the Board. The first is that there was a valid business reason to take disciplinary or corrective action. This is commonly referred to as just cause or good and sufficient reason. If such is successful, the second thing that must be proven is that the discipline imposed on the employee was appropriate given the things the Carrier took into consideration when the decision was being made. The things the Carrier considered must be validly related to the employee and the entire matter at hand. The reason(s) for the specific discipline being imposed must be shared with the employee at the time the employee is informed of the decision. Additionally, during the course of the Investigation process the accused must know all of the charges being levied and the reason(s) for the charges.

The credibility of certain principal individuals is at the heart of this case. The charges against the Claimant are most serious and require a very high level of proof in order for them to be upheld by the Board. The Board has determined that the Carrier failed to make its case against the Claimant.

Accordingly, the Claimant's dismissal is hereby rescinded and any mention of it is to be expunged from his records. The Claimant is to be reinstated without loss of seniority or benefits and returned to work. The Claimant is not entitled to recovery of any lost wages. However, the Claimant is entitled to be reimbursed for any and all out-of-pocket healthcare expenses that he paid during the period that he was improperly dismissed that would have been paid by the Carrier-provided healthcare insurance plan coverage that he was under at the time that he was dismissed.

The Claimant is directed to fully cooperate with the Carrier in providing requested information pertaining to healthcare expenses incurred from the date his Carrier healthcare insurance coverage ended to the date it is reinstated.

### **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 15th day of June 2016.**