

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42304
Docket No. MW-42140
16-3-NRAB-00003-120403**

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. J. Chamberlain by letter dated May 31, 2011 for alleged violation of MOWOR 6.3.1 Main Track Authorization in connection with alleged failure to have all employees and equipment clear of the limits of track and time authority before reporting clear to the train dispatcher on April 21, 2011 at approximately 0912 on the Columbia River Sub Division while working as a track inspector on the rail with Vehicle 19742 between Lyons and Espanola and released his authority before clearing the mainline was arbitrary, capricious, unjust and in violation of the Agreement (System File S-P-1602-C/11-11-0319 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Chamberlain 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.

The Board believes that the more serious the charge(s) levied against a Claimant the higher the degree of proof that is required to uphold the discipline. The PEPA, in Appendices A&B, contain non-exhaustive lists of serious violations. The violations listed in Appendix B may result in dismissal for a first offense. A second violation of the ones listed in Appendix A may result in dismissal if such occurs within a qualifying 12 months or 36 months from the first violation. The often used words "substantial evidence," "clear and convincing evidence" are imprecise and what is substantial or clear and convincing to one person may be very different to another person.

The working relationship between a Carrier and its employees involves an investment. The Carrier invests time, money and other resources in its employees. The Carrier expects to make a positive return on its investments. Investments in employees are not a one-time event. Investments occur over time. Conversely, employees who are regarded as loyal, trustworthy and competent have made a substantial non-monetary investment in their careers with a Carrier. Neither Carriers nor employees should have a cavalier attitude about the investments each has made in the other. Employees, like their employers expect to benefit by their investments.

The Board believes that while the dismissal of any employee is a serious matter, the seriousness of such increases when it involves a long-term employee with a good service record. In the instant case, the Claimant is a very long-term employee with a good work record. The record evidence establishes that there was some confusion between the Claimant and supervision. The record further establishes that the Claimant, within three seconds, realized that he had erred in his communication and corrected it.

The Board has determined that in view of the facts and circumstances involved in this case 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 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.