

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42305  
Docket No. MW-42263  
16-3-NRAB-00003-130246**

**The Third Division consisted of the regular members and in addition Referee Louis V. Imundo, Jr. when award was rendered.**

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employes Division -  
( IBT Rail Conference  
(  
(BNSF Railway Company

**STATEMENT OF CLAIM:**

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

**(1) The discipline (dismissal) imposed upon Mr. A. Koss by letter dated March 13, 2012 for alleged violation of 7.B.8 Company Vehicle Policy & Procedure Manual, MOWOR 1.1.2 Alert and Attentive and MOWSR S12.1.1 Operation of Motor Vehicle in connection with alleged ‘. . . failure to operate vehicle 18708 in a safe and careful manner and failure to be alert and attentive while driving on County Road 75 traveling toward Nonpareil at approximately 1400 hours on January 17, 2012 on the Butte Subdivision causing damage to the vehicle while assigned as a welder on the Mobile Crawford Combo Welding Gang TRWX1525.’ was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C-12-D070-8/10-12-0299 BNR).**

**(2) As a consequence of the violation referred to in Part (1) above, Claimant A. Koss 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 determined that the Claimant was closer to the shoulder of the road than he should have been. However, his truck was not so close to the shoulder that it created a hazard. The Board determined that the vehicle was more likely going 30-35 mph and not 40-45 mph. The Board determined that the record does not contain the necessary evidence to uphold the Claimant's dismissal.

Accordingly, the Claimant's dismissal is hereby rescinded and any mention of it is to be expunged from his records.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 that his Carrier healthcare insurance coverage ended to the date that 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.