

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42368  
Docket No. MW-42513  
16-3-NRAB-00003-140149**

**The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.**

**PARTIES TO DISPUTE:** ( **Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
( BNSF Railway Company (former Burlington  
( Railroad Company)**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal) imposed upon Track Inspector N. Bruce by letter dated January 7, 2013 for his alleged violation of EI 2.4.6 Record of Track Inspections, MOWOR 1.13 Reporting and Complying with Instructions, MOWOR 1.6 Conduct and Other 213.241 of FRA Inspection records, in connection with his alleged ‘. . . late reporting of FRA inspection from November 23, 2012 and your falsification of FRA track inspection reporting through TIMS on November 24, 2012 while assigned as Track Inspector on TINS1402, headquartered in Mullen, Nebraska.’ was arbitrary, excessive, without merit and in violation of the Agreement (System File C-13-D070-5/10-13-0214 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant Bruce shall now “\*\*\* be returned to service immediately in accordance with Rule 40 of the current Agreement.”**

**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.

On November 24, 2012 Claimant Bruce was working as a Track Inspector. On December 6, 2012, Division Engineer Mark Boyer reviewed Track Inspection Management System (TIMS) reports from November and saw that the Claimant did not record his November 23 inspection until the following day. The reason given was computer failure. Boyer checked and was told there were no computer failures at that time, and the Claimant's computer showed used on that day to obtain track authorities and enter time worked. Boyer then found that the Claimant had entered a report of inspecting turnouts at a location where he had not secured track authority. The GPS coordinates associated with the Claimant's vehicle showed he passed the locations in question at speed of 81 and 76 mph, meaning he could not have performed inspections. The Carrier determined that the Claimant was falsifying track inspections and dismissed him for violating EI 2.4.6, MOWOR 1.13 and 1.6, and CFR 213.241.

The Carrier notes Claimant entered false reports into the system, showing a wanton disregard for safety and dishonesty. The Claimant was able to use his computer to input his time and all other track inspectors were able to input their FRA reports; his claim of computer trouble is unfounded. He brought no computer failure to anyone's attention at the time. He asserted he had performed inspections when his truck showed he was traveling too fast to do inspections. Further, he had no track authority. During his Investigation Hearing, the Claimant admitted entering an inspection before he did it. "[I]f I would have seen anything, I would have had to go back in there and . . . redo it." This is a gravely serious offense since the safety of the track is jeopardized. It was a violation of the trust others put in him to report an inspection that was not done.

The Organization argues the Carrier cannot show that the Claimant's computer was working properly. He used his personal vehicle to make the inspections and there is no evidence to the contrary. While it was improper for the Claimant to enter reports before actually making the inspection, there was no

problem and the company should train him rather than dismiss him. Dismissal is excessive. The Claimant has an impeccable record.

When the Claimant input the results from his “inspection,” he was required to specify how he did the inspections and when he did them. The Claimant input this information knowing that it was false. He defends that if he had found something he would have corrected his report. This defense is not persuasive. Any authorized person has the right if not the responsibility to rely upon the Claimant’s reports as of the moment of submission. He acknowledges that when they were submitted, they were false. His claim of computer trouble is not credible and the fact that he had no track authority further establishes the falsity of his reports.

The Carrier has substantial evidence to support its conclusion that the Claimant was guilty of dishonesty in violation of applicable rules. Accordingly, the discipline must be upheld.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of August 2016.