

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42712
Docket No. MW-43331
17-3-NRAB-00003-160021**

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Track Inspector R. Pitner by letter dated July 21, 2014 for alleged violation of ‘... VPR 8.D Business Use, MWOR 1.6 Conduct and MWSR 1.2.5 Safety Rules, Training Practices, Policies.’ in connection with his alleged ‘...failure to comply with the Company Vehicle Policy, including your personal use of vehicle 24489, and your transporting a non-employee passenger in the vehicle during your vacation; and your dishonesty when you made false statements to Company Officers as to permission to use vehicle and the source of trash that you were unloading from the vehicle on to railroad property....’ was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File S-P-1892-G/11-14-0344 BNR).**
- 2) The discipline (dismissal) imposed upon Track Inspector R. Pitner by letter dated July 25, 2014 for alleged violation of ‘... VPR 8.D Business Use and MWOR 1.6 Conduct.’ in connection with his alleged ‘... falsifying FRA track inspection records; falsifying timekeeping; dishonesty; and personal use of BNSF vehicle 24489 on June 21, 2014, while you were assigned as Track Inspector (TINS0442).’ was arbitrary, excessive and in**

violation of the Agreement (System File S-P-1893-G/11-14-0345 BNR).

- (3) As a consequence of the violation referred to in Part (1) above, Claimant R. Pitner shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be made whole for all wage loss suffered.
- (4) As a consequence of the violation referred to in Part (2) above, Claimant R. Pitner shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be made whole for all wage loss suffered.”

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 Carrier asserts that the Claimant's admission to what essentially are stand-alone, dismissible safety violations provides the necessary substantial evidence. Should the claim be sustained, the Claimant should be returned to service with only lost seniority and wages, less outside earnings.

The Organization insists that the dismissal of a 12 year employee with a good record was excessive, particularly when the mitigating effects of his divorce and resulting financial strain are considered. The Claimant was honest during the

Investigation and took responsibility for his actions. He should be returned to service and receive his lost seniority and wages with no offset for outside earnings.

Little is needed by way of analysis and explanation in this case. Evidence of wrongdoing need not be analyzed because the Claimant forthrightly admitted that he transported his child in his Carrier-assigned vehicle and falsely indicated that he had permission to do so and that the trash he was hauling in the vehicle was Carrier rather than personal garbage. Even more critical was the admitted falsification of FRA track inspection records and Carrier timekeeping records as well as personal use of his Carrier vehicle. While the Board does not intend to minimize the stress the Claimant was under because of his divorce and the resulting financial strain, his personal problems cannot serve to excuse the dishonesty on two occasions, the falsification of the time reports, which was a form of theft, and the serious safety implications that were inherent in the falsification of FRA track inspection records. Under the circumstances, the dismissal cannot be seen as arbitrary and capricious.

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 31st day of August 2017.