

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42905  
Docket No. MW-42338  
18-3-NRAB-00003-130340 (Old)  
18-3-NRAB-00003-170287 (New)**

**The Third Division consisted of the regular members and in addition Referee Randall M. Kelly when award was rendered.**

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

**PARTIES TO DISPUTE: (**

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

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier failed and refused to compensate Mr. J. Pearce for attending an investigation on May 4, 2012 (System File C-12-P018-15/10-12-0473 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Pearce shall now be compensated for eight (8.0) hours at his respective straight time rate of pay.”**

**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.

Claimant J. Pearce has established and holds seniority within the Carrier's Maintenance of Way Department. On the date giving rise to this dispute, he was assigned as a machine operator, but required to attend a disciplinary investigation rather than attending to his regularly scheduled work for the day.

On May 4, 2012, the Claimant attended a disciplinary investigation which was scheduled and conducted by the Carrier, and which involved charges against the Claimant that would be examined in detail therein, with the Claimant facing the prospect of serious discipline. In fact, after the Claimant attended the Investigation in question and participated in his defense, the Carrier imposed a Level "S" ("serious") discipline upon him. Such discipline was grieved and that grievance was sustained in Award 42358. All other employees in attendance at the Investigation were compensated for missing the work involved in their regular assignments. The Claimant alone was not compensated for having to miss work in his regular assignment in order to attempt his defense against significant disciplinary action.

By letter dated May 28, 2012 (Employees' Exhibit "A-1"), the Organization filed a claim on the Claimant's behalf asserting that the Carrier had violated the Agreement when it did not pay Claimant alone for the work that he missed in having to attend his investigation and attempt to defend of himself against the imminent prospect of serious discipline.

By letter dated July 27, 2012 (Employees' Exhibit "A-2"), the Carrier denied this claim. The basis for the denial was that:

"The Claimant is not entitled to payment for attending his own investigation. Mr. Pearce is only entitled to payment if a "no discipline" letter was issued by an authorized Division officer. In this instance, the Claimant was disciplined."

By letter dated August 28, 2012 (Employees' Exhibit "A-3"), the Organization appealed this denial of the claim. The Carrier denied this appeal by letter dated October 23, 2012 (Employees' Exhibit "A-4"). Thereafter, the parties attempted to resolve the case on the property in accordance with their Agreement and in the customary and usual manner, including via conferencing the claim on March 5,

2013 (Employees' Exhibit "A-5"), but no accord was reached. The matter now comes before the Board for final adjudication.

The Organization asserted throughout the grievance procedure that the Claimant was entitled to compensation whatever the result of the investigation. Given that the discipline arising out of the investigation was overturned in Award 42358, the Board does not need to address that issue. Rather, the Board finds that the Carrier position no longer applies and the Claimant is entitled to compensation for the day.

**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 14th day of February 2018**