

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44838
Docket No. MW-47090
23-3-NRAB-00003-210696**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel 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. B. Dillon, by letter dated June 12, 2020, for alleged theft of time was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-20-D070-7/10-20-0187 BNR).**
- (2) The claim* shall be allowed as presented because the appeal was not disallowed in accordance with Rule 42 upon cancellation of the Electronic Claims Handling Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant B. Dillon shall now *** be reinstated to service with all seniority rights restored and all entitlement to, and credit for, benefits restored, including vacation and health insurance benefits. The Claimant shall be made whole for all financial losses as a result of the violation, including compensation for: 1) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by the claimant while wrongfully removed from service); 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the Claimant was out of service; 3) overtime pay for lost overtime opportunities based on overtime for any position Claimant could**

have held during the time Claimant was removed from service, or on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been removed from (sic) service; 4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service. All notations of this dismissal should be removed from all carrier records, due to the Carrier's arbitrary, capricious, and excessive discipline leading to the Claimant being improperly dismissed.'

*The initial letter of claim will be reproduced within our initial submission."

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.

Factual Background:

This case involved an allegation that the Claimant submitted a payroll report including an hour of overtime when he had not worked the hour indicated. Insofar as Claimant Dillon's termination was upheld in Award 3-21695, this case has become moot.

AWARD

Claim dismissed.

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 10th day of March 2023.