

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 151, (Case No. 151)**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

**vs**

**BNSF RAILWAY COMPANY**

**William R. Miller, Chairman & Neutral Member  
Joy E. Mendez, Carrier Member  
David D. Tanner, Employee Member**

**STATEMENT OF CLAIM:**

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

- 1. The Carrier violated the Agreement commencing March 6, 2013, when Claimant, Jolene K. Bitsui (1568815), was dismissed for her alleged carelessness of the safety of herself and others when she released track authority while employees were still foul of the track on February 28, 2013 near Williams, Arizona while working as a Lead Welder. The Carrier alleged violation of Maintenance of Way Operating Rule (MOWOR) 1.1 Safety, MOWOR 1.3.1 Rules, Regulations and Instructions, 1.6 Conduct, and 6.3.1 Main Track Authorization.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this dismissal and he be reinstated, with seniority, vacation, all rights unimpaired and pay for all wage loss commencing March 6, 2013, continuing forward and/or otherwise made whole."**  
**(Carrier File No. 14-13-0209) (Organization File No. 170-13S1-138)**

**FINDINGS:**

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

On March 6, 2013, Claimant was directed to attend a formal Investigation on March 26, 2013, which was mutually postponed until April 2, 2013, concerning in pertinent part the following charge:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged carelessness of the safety of yourself and others when you allegedly released track authority while employees were still foul of the track at MP 375.0 on Thursday, February 28, 2013, at approximately 4:49 p.m., on the Seligman Subdivision near Williams Arizona while working as Lead Welder on TRWX0438.


**This investigation will determine possible violation of MOWOR 1.1 Safety, MOWOR 1.3.1 Rules, Regulations, and Instructions, MOWOR 1.6 Conduct, and MOWOR 6.3.1 Main Track Authorization."**

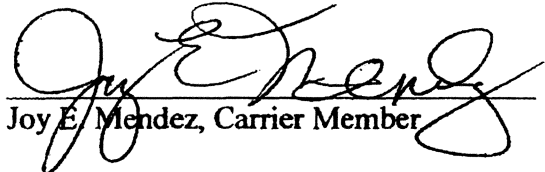
On April 26, 2013, Claimant was notified that he had been found guilty as charged and was dismissed from service.

This is the second in a series of two dismissal cases before the Board involving the same Claimant. The skillful arguments of the respective parties need not be reiterated in this instance as the question of Claimant's alleged guilt has become academic because in Award No. 150 this Board found that Carrier's decision to dismiss Claimant was appropriate. Therefore, the Board finds and holds that the dismissal in Award No. 150 cannot be overridden and the issue raised in the instant case is now moot, thus, the claim is dismissed. However, we would add that a review of the transcript and record substantiated that the Carrier met its burden of proof that Claimant was guilty as charged.

**AWARD**

Claim dismissed.

  
William R. Miller, Chairman & Neutral Member

  
Joy E. Mendez, Carrier Member

  
David D. Tanner, Employee Member

Award Date: July 10, 2014