

BEFORE PUBLIC LAW BOARD NO. 7602

CASE NO. 116

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES DIVISION**

vs.

BNSF RAILWAY COMPANY

**NMB Case No. 116
Award No. 116
Organization No. C-23-D070-4
Carrier No. 10-23-0150**

STATEMENT OF CLAIM

The Organization alleges that the Carrier violated Rule 40 stating that Claimant Michael Kirby was not given a fair and impartial investigation as well as alleging that the Carrier did not meet its burden of proof substantiating any evidence showing Claimant was in violation of MWOR 1.15 ad EI G.4. As a result, the Organization requests Claimant be reinstated to service with seniority unimpaired and for all lost wages, including but not limited to all straight time hours, overtime hours, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health and welfare and dental insurance, and any and all other benefits to which entitled in accordance with Rule 40 as settlement of this claim.

FINDINGS AND OPINION

The Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties' PLB Agreement and that the Board has jurisdiction over the dispute.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. A careful review of the record convinces the Board that there is not substantial evidence in the record to uphold the Carrier's determination regarding Claimant Michael Kirby. The discipline assessed by the Carrier was arbitrary under the facts and circumstances of this record and therefore must be overturned. The dismissal shall be removed from Claimant's personal record, and he shall remain under the review period as if the dismissal had not occurred. No backpay is awarded.

AWARD

Claim sustained in accordance with the findings above. The Carrier is to comply with the award on or before thirty (30) days following the date the award is adopted.

Jeanne Charles

Jeanne Charles
Chairman and Neutral Member

Zach Hutto

Carrier Member
Dated: 12/12/2025

Daryl M. Pasco

Labor Member
Dated: 12/12/25