

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 6986  
AWARD # 2      CASE # 2**

**PARTIES TO DISPUTE**

Brotherhood of Maintenance of Way Employees

And

BNSF Railway Company

**STATEMENT OF CLAIM**

Case # 2

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on November 4, 2005, when Claimant Billy D. Williams was dismissed for violation of Maintenance of Way Operating Rule 1.6 – Conduct, Maintenance of Way Safety Rules 1.2.9 – Horseplay, and BNSF Policy HR 90.2 – Workplace Harassment.
2. As a consequence of the Carrier's violation referred to in part (1) above, the Carrier shall return the Claimant to service, paid for all time lost, and that all references to this incident shall be removed from Claimant's personal record.

**Carrier file No. 12-06-0024**

**Organization File No. B-2865-5**

**FINDINGS**

A review of the transcript of the Investigation held on October 25, 2005 notes that the Claimant was notified to attend the Investigation to determine the Claimant's responsibility, if any for his alleged failure to comply with instructions concerning retaliation or an attempt to seek information for the purpose of retaliation issued September 21, 2005 by Division Engineer Dan

Rankin and Roadmaster Mike Knight and harassment of Employees Roger Claborn-Morris, Charles Sowers and C.D. Willis which has created an intimidating, offensive and hostile work environment, in violation of Maintenance of Way Operating Rule 1.6, Maintenance of Way Safety Rules S-1.2.9 and Policy No. HR-90.2 on Workplace Harassment.

Initially the Organization notes that there was a procedural error made by the Carrier during the on property handling. The organization contends that the Carrier was untimely when Mr. Bobb failed to timely deny the appeal.

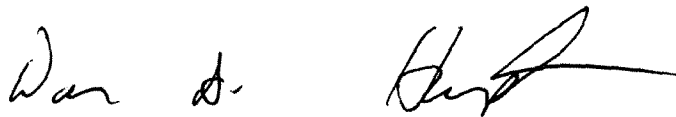
It is noteworthy that the Organization in it's initial appeal to labor relations dated February 13, 2006 does not contend any violations of the time requirements of the Agreement. Subsequently the Organization notified labor relations in an appeal dated May 9, 2006.

We have reviewed the claims and counter claims regarding this issue and have decided that neither party has been persuasive in advancing their arguments during the handling of the claim on the property. Our decision therefore is based solely on the merits of the case.

It is evident however that the Carrier has met their burden of proof regarding the Claimant's conduct. It is obvious the Claimant would not let the issue rest even when so instructed by supervision. Such conduct cannot be condoned and the discipline was appropriate.

## **AWARD**

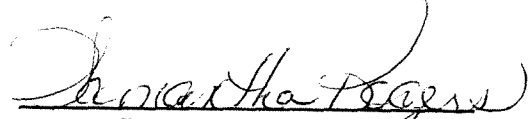
Claim denied in accordance with the findings.

A handwritten signature in black ink, appearing to read "Don A. Hampton", is written over a horizontal line.

**Don A. Hampton, Chairman & Neutral Member**



**R.C. Sandlin**  
**Organization Member**



**Samantha Rogers**  
**Carrier Member**

**DATED:** July 31, 2007