

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

**Award No. 26793
Docket No. 46596
09-1-NRAB-00001-070032
07-1-32**

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

**PARTIES TO DISPUTE: (United Transportation Union
(BNSF Railway Company**

STATEMENT OF CLAIM:

**“Organization File# DISP BLACK 4/24/05
Carrier File# 53-05-0620D**

Claim in behalf of Seattle, W. A. Conductor P. R. Black for immediate return to service, with seniority unimpaired, complete record clearance and pay for all time lost, including investigation account dismissed from service on May 28, 2005 for alleged violation of Air Brake and Train Handling Rule 102.1.1 (securing an unattended train); TY&E Safety Supplement Rule 21.1 (not wearing Safety Boots) and GCOR Rule 1.6 (conduct) on April 24, 2005.”

FINDINGS:

The First 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.

On May 28, 2005 the Carrier found as follows:

“Effective this date you are hereby dismissed from the service of BNSF Railway for violation of Air Brake and Train Handling Rule 102.1.1, securing an unattended train, for violation of TY&E Safety Supplement Rule 21.1, not wearing required safety boots, and for violation of General Code of Operating Rule 1.6 concerning conduct, while you were working as conductor on train M-INBNWE123A at approximately 1120 hours on April 24, 2005, at Swift, Washington as disclosed by testimonies offered at Investigation accorded you on May 12, 2005.”

The record shows that the Carrier proved that the Claimant violated its Rules. At the time of the incident the Claimant had 28 years of service.

Based on the facts in this case the Board finds the discipline of permanent dismissal is excessive. The Claimant will be reinstated with seniority unimpaired, but without pay for time lost.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 2nd day of April 2009.