

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 26828
Docket No. 46601
09-1-NRAB-00001-070037
07-1-37

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 MCDONALD 2/19/04
Carrier File# 53-04-0193

Claim in behalf of Vancouver, WA Conductor T. L. McDonald for immediate return to service with payment for all lost wages and complete record clearance account dismissal for alleged violation of GCOR 15.1 and GCOR 15.2 (failure to comply with Portland & Western Railroad Form B, #2018, Item 55, between MP 64.0 and MP 73.1 on PNWR, OE District) on January 18, 2004.”

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.

As a result of an Investigation held on February 6, 2004 the Carrier found the Claimant violated Rules 15.1 and 15.2 on January 19, 2004. On February 19, 2004 the Carrier dismissed the Claimant from its service.

The Claimant, who has more than 36 years of service, was reinstated by the Carrier on April 12, 2004.

The facts in this case are that on January 18, 2004 while working as Conductor on L-NWE 6631-171, the Claimant's train entered the P&W Railroad in violation of a Form B track warrant. It appears that the Track Foreman of the P&W Railroad issued two track warrants in violation of P&W Rules. The Track Supervisor for the P&W did not testify at the Hearing.

The Board finds that the Carrier failed to meet its burden of proving that the Claimant violated its Rules. As a result, the Carrier will remove the discipline from the Claimant's record and pay the Claimant for all time lost, less any outside earnings.

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.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division**

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