

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 42289
Docket No. MW-42754
16-3-NRAB-00003-140452

The Third Division consisted of the regular members and in addition Referee Louis V. Imundo, Jr. when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level S thirty (30) Day Record Suspension and three (3) year review period] imposed upon Mr. T. Renwick by letter dated June 4, 2013 for alleged violation of MOWOR 1.10 Games, Reading, or Electronic Devices in connection with charges of alleged use of a cell phone while driving a company vehicle on April 13, 2013 when assigned as track inspector in the Ottumwa Subdivision was on the basis of unproven charges, excessive and in violation of the Agreement (System File C-13-D040-29/10-13-0451 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, the imposed discipline shall be overturned and the Claimant’s record shall be cleared of the charges leveled against him.”

FINDINGS:

The Third 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.

The Board finds that there was no violation of Rule 40. Thus is so because the DriveCam system operates in such a manner that there is a built-in delay between the time that an incident occurs and the time when the offending employee's chain of supervision is notified. The on-property record evidence reveals that DriveCam videos are viewed by a third party and only if improper behavior is observed is the video sent to the Carrier for viewing by the employee's Supervisor. The record evidence further reveals that the Investigation was conducted in compliance with Rule 40.

Nevertheless, the Board finds that although there was just cause to discipline the Claimant for his violation of MOWOR 1.10, given the particular facts and circumstances involved in this case, the three-year review period was excessive. Accordingly, the Claimant's review period is hereby reduced to one year.

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 Third Division

Dated at Chicago, Illinois, this 21st day of April 2016.