

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42702  
Docket No. MW-43216  
17-3-NRAB-00003-150454**

**The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division –  
IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(BNSF Railway Company (Former Burlington Northern  
Railway Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline [Standard Formal Reprimand and One (1) Year Review Period] imposed upon Mr. W. Youngblood by letter dated July 7, 2014 for alleged violation of MWSR 12.1.1 in conjunction with charges of alleged failure to operate BNSF vehicle A9634D in a careful and safe manner by exceeding posted speed limit by 15 MPH, as observed by on board dash camera on March 28, 2014 was on the basis of unproven charges, excessive and in violation of the Agreement (System File C-14-D040-23/10-14-0299 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 Carrier notes that the DriveCam showed Claimant Youngblood driving 75 MPH in a 55 MPH zone—substantial evidence that he was not operating the Carrier vehicle in a safe manner.**

**The Organization insists that substantial evidence is lacking as there is no probative evidence of the posted speed limit or the speed at which the Claimant was traveling. The Carrier cannot rely on a computerized data base prone to malfunction and error. The DriveCam shows neither the posted speed limit nor the Claimant's speed. The Claim should be sustained and the Claimant's record cleared.**

**The Claimant has been disciplined for failing to operate his "BNSF vehicle A9634D in a careful and safe manner, exceeding posted speed limits by 15 MPH . . ." While Boards have differed in the level or quantum of proof necessary in cases involving serious infractions, particularly those involving dishonesty, there should be no dispute that the appropriate level of proof in this case is the general industry standard of "substantial evidence." Moreover, it is the Carrier's burden to prove the charge against the Claimant.**

**Substantial evidence herein involves the production of two numbers: the posted speed limit and the Claimant's speed when he allegedly violated the posted limit. By itself, the unnamed "trusted Posted Speed Limit database" is insufficient to establish the posted speed limit, as it is hearsay evidence that does not qualify as substantial. However, Roadmaster Springer testified that he and ADMP Diefenbach personally verified the 55 MPH speed limit. That testimony was not contradicted by the Organization and therefore meets the "substantial" test. The Organization contends that if the speed limit had, in fact, been 55 MPH, the Carrier would have provided confirming evidence, presumably a snapshot of a posted sign. The opposite side of that coin is that the Organization could also have provided evidence, if it found any, to dispute the Carrier's contention that the posted limit was 55 MPH.**

The Board is mindful of the caution written in Third Division Award No. 42270 that fairness requires that “The Organization must be allowed to examine the Carrier’s witnesses and to present its own witnesses.” While this stricture is almost universal, there are exceptions. While evidence may be presented that technicians have been properly trained and certified, that a proper forensic chain of custody has been maintained with bodily fluid specimens and that instruments have been properly calibrated, strictly speaking breathalyzers are not cross examined and the results of urinalyses or blood draws are not cross examined. In the Claimant’s case, in addition to the DriveCam e-mail that placed his average speed at 70 MPH, we have the Claimant’s testimony that, because he had to take an unexpected detour, he was admittedly hurrying to make a morning job briefing, we know that the DriveCam was triggered by excessive braking and there is the Claimant’s testimony that “. . . I decelerated quicker than I should have . . .” after passing the semi near the crest of a hill. The evidence is not elegant, but it is substantial. The charge stands.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 12th day of July 2017.