

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42709  
Docket No. MW-43256  
17-3-NRAB-00003-150509**

**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 with a one (1) year review period] imposed upon Track Inspector J. Santoy by letter dated April 17, 2014 for his alleged violation of ‘...MWOR 1.19 Care of Property.’ in connection with his charges of alleged personal use of railroad property while he was assigned as track inspector beginning on January 24, 2014 and continuing forward, including excessive data usage on Air Card 817-876-0641 and usage during non-work hours was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File S-P-1873-G/11-14-0245 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Santoy ‘...should have his record expunged and cleared of any wrongdoing. . .’”**

**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 asserts that it obtained substantial evidence with Claimant's admission that he used his Carrier-issued Verizon Air Card for personal use. The discipline was appropriate for this first Standard violation. The Investigation was fair and impartial with none of the alleged procedural defects prejudicing the Claimant.

The Organization insists that the investigation was untimely in view of the Carrier's first knowledge of the alleged violation when it paid the January 2014 air card charges. Even if March 9, 2014 is considered the date of first knowledge, the investigation was untimely. The infraction was not proven because the Claimant was allowed "limited personal use" of wireless equipment or services and the Carrier did not define the phrase or instruct the Claimant on the use of the air card. Even assuming a violation, the reprimand was excessive for a 25 year employee who did nothing wrong.

The Board does not find that payment of the Verizon air card statement in January 2014 constituted first knowledge because the Carrier did not pursue the possibility of charges for personal use based on that bill. However, that is not so for the Verizon Wireless statement dated February 23, 2014. That statement triggered concern and a request for detailed data about the charges on the statement. The data were received on March 10, 2014, at which point the Carrier obviously had first knowledge of likely extensive personal use of the Verizon air card by the Claimant.

Rule 40.A requires that an Investigation be scheduled within 15 days of the Carrier's first knowledge except when an employee is withheld from service for a "serious infraction of rules." The ensuing notice of investigation dated March 18, 2014, with the Investigation to be held on March 24, 2014, informed the Claimant that he was being withheld from service. Rule 40.B requires that when an employee

is withheld from service, the investigation must follow within 10 days. While the Investigation was mutually postponed until April 2, 2014, the original date is the critical one. Since that date was within 15 days of the acquisition of first knowledge by the Carrier and within 10 days of the date the Claimant was withheld from service, it clearly was timely.

There is no question that the Claimant used the Verizon air card for personal use, as he admitted that during the Investigation. Carrier policy allows “limited personal use” of the air card, surely an ambiguous standard, particularly when the Carrier seemingly has provided no guidelines that might help define “limited.” However, even an ambiguous standard has its limits. The Claimant’s monthly limit was 10GB compared to the usual 5GB plan. Even then, the charges on the bill under consideration were well in excess of what they would have been for the 10GB plan. That plus the Claimant’s admission provides substantial evidence that his personal use of the air card was clearly more than limited.

**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 31st day of August 2017.