

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42864
Docket No. SG-43314
18-3-NRAB-00003-150517**

The Third Division consisted of the regular members and in addition Referee Patricia Bittel when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of D.E. Mount, for any mention of this matter to be removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of a Level S (Serious) 30-day record suspension with a 1-year review period to the Claimant, without providing him a fair and impartial Investigation, and without meeting its burden of proving the charges in connection with an Investigation held on March 14, 2014. Carrier's File No. 35-14-0037. General Chairman's File No. 14-018- BNSF-129-S. BRS File Case No. 15180-BNSF.”

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.

On February 28, 2014, Division Engineer Michael Watkins alleged the Claimant was Hy-railing without wearing a seatbelt. The Carrier determined he had violated Maintenance of Way Safety Rule ("MWSR") 12.5 Seat Belts, and issued a 30-day Level S Record Suspension with a one-year review period.

The Organization protested the discipline as unjustified. The parties to said dispute were given due notice of hearing. Failing to resolve the matter, the Organization referred this dispute to the National Railroad Adjustment Board ("NRAB") for arbitration. This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The Carrier denies any Rule 54 violation. Modified Rule 54 only requires that the Organization be provided the opportunity to review evidence 24-hours in advance that it, meaning BNSF -- not the Organization, intends to submit as an exhibit during the investigation. The Carrier points out that it was the Organization that wanted to submit the HLCS log into evidence and concludes the rule does not apply.

The Claimant admitted he was not wearing his seatbelt and said he forgot, "It was just not on my mind." In the Carrier's view, wearing a seat belt would not have resulted in Claimant having to "blindly" back his vehicle as the Organization asserts. It explains that the exception to the requirement of seatbelts is for machines only, and argues a driver cannot stand in the cab of a truck. In its view, proper use of all of the mirrors on the vehicle would have allowed Claimant to safely back up. In fact, it notes, the Claimant admitted at the investigation that he was not standing up. TR 38

The Organization argues that MWOR S-14.1.2 clearly gave the Claimant the option of removing his seat belt when his vision was obscured. It maintains this was exactly the case; large utility trucks have blind spots, especially on a curve. Claimant simply unbuckled and raised up so he could see. In its view, the Claimant was only trying to obtain a clear view of his surroundings and should in no way be penalized for this.

The Organization also notes the Rules were revised on March 12, 2014, and the incident predated the change. It concludes he is being charged under rules that did

not exist at the time of the alleged offense and the discipline should be voided for this reason if nothing else.

The Board is not persuaded that the Organization or the Claimant has been prejudiced by procedural error in this case. We can find no prejudice due to the fact that the Organization's opportunity to the DriveCam did not occur until the time of investigation. Also, at the time of the events here concerned, there was a rule requiring seat belts. Hence, any error in the Notice of Investigation was clerical as opposed to substantive and the Notice was adequate to serve its purpose.

The Board is not persuaded by the argument that the Claimant unbuckled his seatbelt to see better around a curve for several reasons. He admitted at hearing that he was not standing. More importantly, he stated he "forgot" his seatbelt. This statement cannot be harmonized with intentional unbuckling. The argument about obstructed vision strikes the Board as an afterthought which is not reflective of the actual circumstances at the time. The truth is not that the Claimant was unbuckling to see better; he simply forgot his seatbelt. The Carrier has been resolute in its vigorous enforcement of safety rules, including the rule requiring seatbelts; it is not for the Board to second-guess its managerial prerogative in this case.

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 10th day of January 2018.