

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42927  
Docket No. SG-43283  
18-3-NRAB-00003-150208**

**The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Railroad Signalmen**  
**(CSX Transportation, Inc.**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood that:**

**Claim on behalf of C.E. Potter, for payment for all time and benefits lost, and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 50 – Discipline/Initial Hearing, when it issued the harsh and excessive discipline of a fifteen (15) calendar day actual suspension 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 January 9, 2014. Carrier’s File No. 2014-164609. General Chairman’s File No. CEP\_INSV. BRS File Case No. 15103-B&O.”**

**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.**

By notice dated December 2, 2013, the Claimant was directed to attend a formal Investigation on charges that the Claimant allegedly violated Carrier rules in connection with a November 8, 2013, incident in which the Claimant allegedly drove a Carrier truck in an aggressive and dangerous manner, almost striking an OSP vehicle that had to apply brakes to avoid a collision; and allegedly exceeded the posted speed limit by 10 to 17 miles per hour. The Investigation was conducted, after a postponement, on January 9, 2014. By letter dated February 7, 2014, the Claimant was informed that as a result of the investigation, he had been found guilty as charged, and that he was being assessed a 15-calendar-day suspension. The Organization thereafter filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant was provided a fair and impartial Investigation, because substantial evidence in the record proves the Claimant to be guilty as charged, and because the discipline imposed was appropriate and fully justified. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to provide the Claimant a fair and impartial Investigation, because the Carrier failed to meet its burden of proving the charges against the Claimant by substantial evidence, because the Carrier relied on inconclusive evidence that was not enough to sustain its burden of proof, and because the discipline imposed was harsh and excessive.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant was driving recklessly in a Carrier vehicle on the date in question. The Carrier was notified by someone who called its "1-800" number to report unsafe driving. The Carrier then reviewed GPS, which showed that the Claimant was speeding approximately 10 to 12 miles over the limit, depending on what the speed limit was in the area. The Claimant denied that he was driving recklessly. The Carrier did not call in the witness who called the "1-800" number. The Carrier's witnesses were also somewhat unsure as to whether or not the GPS accurately broadcast the actual speed of the Claimant.

It is fundamental that the Claimant has a right to have the accuser witness at the Hearing in order for him or his representative to be able to cross-examine the accuser. In this case, the Carrier did not call in the person who had reported the unsafe driving. There is simply insufficient evidence in this record to support the finding of guilty on the Claimant's part. Therefore, the Board has no choice other than to sustain the claim.

**AWARD**

Claim sustained.

**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 14th day of February 2018.

## **CARRIER MEMBER'S DISSENT**

**to**

**THIRD DIVISION AWARD 42927 - DOCKET NO. SG-43283**

**(Referee Peter R. Meyers)**

**In this case, Claimant was suspended for 15 days for driving a Carrier vehicle in an aggressive and dangerous manner, almost striking an OSP vehicle that had to apply brakes to avoid a collision, and for exceeding the posted speed limit by an estimated 10-17 MPH.**

**In sustaining this claim, Arbitrator Meyers found that the Carrier failed to meet its burden of proof because the "How's My Driving?" report was made by an anonymous caller. However, GPS records did confirm that Claimant was speeding by 10-12 MPH over the posted speed limit, depending on what the posted speed limit was in the area. The Board found that Claimant was denied his due process rights because the individual who made the "How's My Driving?" report did not appear as a witness and, as such, Claimant was unable to cross-examine him/her.**

**The "How's My Driving?" hotline is maintained for concerned citizens to report any observation of a CSX employee operating a CSX vehicle in an erratic or reckless manner. Hotline callers can remain anonymous if they wish. If the Carrier required the caller to reveal identifying information about him/herself when making such reports, it would discourage citizens from reporting reckless driving**

out of fear for their personal safety, thereby defeating the purpose of this safety program altogether.

Moreover, even if the Carrier could identify the anonymous caller, this Board is aware that the Carrier does not have subpoena powers to compel the caller's attendance at the discipline hearing. Furthermore, this Board is not bound by traditional rules of evidence and procedure, and the GPS data was substantial evidence to corroborate the caller's observations.

In light of the above, the Carrier dissents from the Award.



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Lindsay O'Brien  
For Macon Jones, Esquire  
Carrier Member



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Matthew R. Holt

Date: February 9, 2018

**Labor Member's Answer to  
Carrier Member's Dissent to  
Third Division Award No. 42927  
(Referee Peter R. Meyers)**

Typically, this Labor Member, and Organization as a whole, would ignore this type of dissent presented by the Carrier Member as they attempt to undermine a sound decision reached by the Majority. But, when a dissenting party attempts to present an obviously unsound reason for its disagreement with the Majority's decision, it compels this Labor Member to respond.

First, the Minority asserts that, *"However, GPS records did confirm that Claimant was speeding by 10-12 MPH over the posted speed limit, depending on what the posted speed limit was in the area."* and that, *"...the GPS data was substantial evidence to corroborate the caller's observations."* The Minority provides no proof that GPS is the accepted standard for measuring speed, and even if it was the accepted standard, the Minority failed to provide any evidence from an individual with personal knowledge regarding how the GPS calculates speed, whether there was any type of calibration of the equipment used to detect speed, whether the methods employed by the particular manufacturer to detect speed are scientifically reliable, or the accuracy of the GPS' speed detection.

Secondly, the Minority stated that, *"The Board found that Claimant was denied his due process rights because the individual who made the 'How's My Driving?' report did not appear as a witness and, as such, Claimant was unable to cross-examine him/her."* and that *"Moreover, even if the Carrier could identify the anonymous caller, this Board is aware that the Carrier does not have subpoena powers to compel the caller's attendance at the discipline hearing."* Essentially, the Minority believes that the standard of proof should be lowered so much that an

anonymous call from a driver who possibly had road rage satisfies that burden. We think not. Such logic would defy common sense. Due process requires that the member have a right to face his or her accuser. It would be needless to cite the plethora of arbitral precedent on this issue. Without the accuser being present, the Organization could not cross examine the accuser with questions in relation to this complaining individual's ulterior motives or if they were simply angry because the Claimant, in this case, was driving too slow. Lastly, we must ask, how did the Hearing Officer determine the credibility of the complaining individual that the Minority relies so heavily on to support its case?

This Labor Member hopes that this decision will guide the Minority through the proper application of all due process procedures in the future and that it will employ a fair standard of proof in its discipline cases moving forward.

A handwritten signature in cursive script that reads "John Bragg". The signature is written in black ink and is positioned above a horizontal line.

**Labor Member**