

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43172  
Docket No. SG-43702  
18-3-NRAB-00003-160508**

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

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(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 H.J. Moore, for payment for all lost time, reimbursement for mileage and expenses for attending the Investigation, and any reference to this matter 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 3-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 January 15, 2015. Carrier’s File No. 35-15-0030. General Chairman’s File No. 15-008-BNSF-33-K. BRS File Case No. 15375-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.

By notice dated December 16, 2014, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules in connection with a December 12, 2014, incident in which the Claimant allegedly failed to wear a seat belt while operating a Carrier vehicle. The Investigation was conducted, after a postponement, on January 15, 2015. By letter dated February 2, 2015, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and was being assessed a Level S thirty-day record suspension and a three-year review period. The Organization thereafter filed a claim on the Claimant's behalf, 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 afforded a fair and impartial Investigation, because substantial evidence and the Claimant's admissions establish that the Claimant is guilty as charged, because there is no merit to the Organization's arguments, because the Organization's requested remedy is overbroad, and because the discipline imposed was neither harsh nor excessive. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to afford the Claimant a fair and impartial Investigation, because the Carrier violated the Claimant's due process rights when the hearing officer improperly delved into the Claimant's disciplinary history, because the Carrier failed to meet its burden of proof, and because the discipline imposed was unwarranted, harsh, and excessive.

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

The Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant was guaranteed all of his due process rights throughout the proceeding.

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier Safety Rules 12.5, 14.9, and 14.1.2 when he was operating a Carrier vehicle and was not wearing his seat belt. The Claimant

admitted that he did not put on his seat belt when he was operating the vehicle, but he said that he had to do so in order to work safely. The evidence does not support that. The Claimant was captured on a DriveCam that showed him backing up without the seat belt on in violation of the rules.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was guilty of a Level S violation. The Carrier issued him a thirty-day Level S record suspension, as well as a three-year review period. Given the clear-cut rule violation, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued that thirty-day record suspension to the Claimant. Therefore, this claim must be denied.

**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 30th day of May 2018.