

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43193  
Docket No. SG-44085  
18-3-NRAB-00003-170123**

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 D.J. Richards, 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 August 28, 2015. Carrier’s File No. 35-16-0009. General Chairman’s File No. 15-045-BNSF-119-D. BRS File Case No. 15519-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 August 3, 2015, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules in connection with an August 1, 2015, incident in which the Claimant allegedly used an electronic device while operating a Carrier vehicle. The Investigation was conducted, after a postponement, on August 28, 2015. By letter dated September 9, 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 one-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, and because the discipline imposed was appropriate and consistent with PEPA and arbitral precedent. 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 failed to meet its burden of proof, because the Carrier arbitrarily applied its rules in this case, because the Carrier failed to properly review the record before assessing discipline, because the Carrier subjected the Claimant to disparately harsh treatment, because there is no support for the Carrier's position, and because the discipline imposed was harsh, excessive, and not progressive in nature.

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 driving a Carrier vehicle while using a cellular device in violation of Carrier rules. The record reveals that the Claimant was operating the vehicle and braked suddenly due to distracted driving on his part as a result of being on his cell phone. A DriveCam video shows the Claimant with the cell phone, and it was not in hands-free mode as required by the rule. The pictures clearly show the Claimant holding his cell phone while on duty operating a vehicle.

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 issued a Level S thirty-day record suspension and a one-year period of review. Given the seriousness of the offense, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued that discipline to the Claimant for this admitted rule violation. 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.