

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43285
Docket No. SG-43937
18-3-NRAB-00003-160544**

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 S.L. Lauhoff, for reinstatement to service with compensation for all time lost, including overtime, with all rights and benefits unimpaired and any mention of 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 dismissal 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 February 13, 2015. Carrier’s File No. 35-15-0031. General Chairman’s File No. 15-011-BNSF-161-NM. BRS File Case No. 15388-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 January 20, 2015, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules in connection with a January 19, 2015, incident in which the Claimant allegedly had used a cellular device in other than hands-free mode while operating a Carrier vehicle. The Investigation was conducted, after a postponement, on February 13, 2015. By letter dated March 9, 2015, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and was being dismissed from the Carrier's service. 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 in accordance with PEPA. 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 ignored the principles of progressive discipline, 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. 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 Operating Rule 1.10 and System Special Instruction 16 when he used a cellular device other than in hands-free mode while he was operating a Carrier vehicle on January 19, 2015. The Claimant admitted

that he was using his cell phone to access the Pandora Internet Radio App while driving the vehicle. The record reveals that the Claimant did not simply push a single button on the phone but was attempting to find a particular type of music that he wanted to listen to. The Claimant was observed by a supervisor swerving off the road more than three times when the supervisor tried to determine what had caused the Claimant to drive erratically. The Claimant admitted that he had been using his phone.

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 was dismissed for this offense. The Claimant's record reveals that this was his second serious Level S rule violation. This second Level S occurred within the review period after the first one which had occurred less than a year before. Given the previous disciplinary background of the Claimant, coupled with this latest offense and the Carrier's discipline policy, the Board finds that the Carrier did not act unreasonably, arbitrarily, or capriciously when it terminated the Claimant for this latest Level S offense. 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 25th day of September 2018.