

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43286
Docket No. SG-44174
18-3-NRAB-00003-170115**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyer 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 R.A. Chinadle, for any mention of this matter to be removed from his personal record, and any lost compensation, including overtime, as a result of attending the investigation, 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 5, 2015. Carrier’s File No. 35-16-0002. General Chairman’s File No. 15-040-BNSF-188-SP. BRS File Case No. 15509-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 June 3, 2015, the Claimant was directed to attend a formal hearing on charges that the Claimant allegedly had violated Carrier rules by allegedly using a cell phone or similar device in other than hands-free mode while operating a Carrier vehicle on May 28, 2015. The Investigation was conducted, after two postponements, on August 5, 2015. By letter dated September 1, 2015, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and was being assessed Level S thirty-day record suspension with 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 establishes 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 Claimant did not violate the cited rule, because there is no support for the Carrier's position, 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 that the Claimant was afforded 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 Rules 1.10 and 2.5 by using a cellular device in other than a hands-free mode while operating a Carrier vehicle. The DriveCam equipment in the Claimant's vehicle shows the Claimant holding his cell

phone while participating in an eighteen-minute phone call. Although the Claimant states that he was only turning off and on the mute button, the fact remains that the Claimant was not operating the phone hands free at the time that he was operating the vehicle. Consequently, the Claimant technically was in violation of the Carrier's rules which prohibit this type of activity. The Claimant was using his cellular phone for voice communications and he was using his hands to mute and unmute the call.

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, which included a thirty-day record suspension and a one-year period of review. Given the seriousness of the offense of which the Claimant was properly found guilty, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued that discipline 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 25th day of September 2018.