

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43683  
Docket No. MW-44855  
19-3-NRAB-00003-180117**

**The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**  
**(BNSF Railway Company**

**STATEMENT OF CLAIM:**

- “(1) The discipline [Level S thirty (30) day record suspension with a three (3) year review period] imposed upon Welding Foreman D. Cuhel by letter dated September 29, 2016 for alleged violation of MWOR 1.10 for his alleged failure to keep his laptop closed while operating "a company vehicle on August 22, 2016 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-16-D040-18/10-16-0392 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Cuhel shall have his record cleared of the charges leveled against him in accordance with Rule 40 of the Agreement."**

**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.

The Carrier maintains the Claimant failed to keep his laptop closed while operating a company vehicle on August 22, 2016. It notes the Claimant's Drivecam captured his laptop open on the vehicle console in violation of MOWOR 1.10, which requires that such devices must be closed. At the time, the Claimant was under Level S with a one-year review period. As a result, he was assessed a second Level S, this time with a three-year review period. The Carrier claims justification in that the rule functions to protect employees. Since Claimant was subject to termination for a second level S offense, the Carrier maintains it has already exerted substantial leniency in the case.

The Organization argues that the discipline is completely disproportional to the nature of the offense. It points out that it is uncontested that there is no evidence whatsoever that the Claimant was using the computer or even looking at it. Instead, the only evidence is that it sat open and ignored. For all the evidence shows, the computer may have been turned off. In the Organization's view, to saddle an employee with fully three years of review just for having his laptop open is excessive and onerous.

Safety concerns have long been deemed serious in the view of the Carrier, with support from generations of arbitral analysis. In this case, the Claimant was driving with his laptop open on the center console. The laptop was in a position to distract and cause a safety hazard. The Board does not find the rule prohibiting this to be unreasonable; the Carrier's assessment that this created a safety hazard did not constitute an abuse of discretion. The Carrier did not use this as a means of imposing the maximum penalty but has exercised reasonable discretion in selecting the discipline assessed.

### **AWARD**

Claim denied.

**Form 1**  
**Page 3**

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**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 18th day of June 2019.**