

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43686
Docket No. MW-44988
19-3-NRAB-00003-180482**

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:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. B. Rose by letter dated January 31, 2017 for alleged violation of MWOR 1.10 Games, Reading, or Electronic Devices in connection with his alleged use of an electronic device while operating a Carrier vehicle was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File T-D-5173-E/11-17-0189 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Rose shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered including lost overtime, expenses and benefits.”**

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.

On November 6, 2016, the Carrier reviewed a DriveCam video which showed the Claimant with a cell phone. Because the DriveCam activated when the Claimant suddenly braked, the Carrier concluded he was distracted while driving. DriveCam still shots showed the Claimant holding a cellphone on his lap as he came upon a roadway construction flagger.

The Organization asserts the discipline was excessive and unreasonable. It challenges any conclusion that the Claimant was driving distracted, noting the flagger came up suddenly on the route.

Due to the particular facts of this case, the Board deems the proper result to be reinstatement without back pay or retroactive benefits, with a Standard Formal Reprimand and three-year review period beginning upon reinstatement.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of June 2019.