

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43847
Docket No. SG-44960
19-3-NRAB-00003-180394**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when the award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(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 M.K. Johnson, for 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 a Level S, 30-day record suspension with a 1-year review period to the Claimant, without providing a fair and impartial Investigation, and without meeting its burden of proving the charges in connection with an Investigation held on January 23, 2017. Carrier’s File No. 35-17-0006. General Chairman’s File No. 17-013-BNSF-121-T. BRS File Case No. 15786-BNSF. NMB Code 106.”

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 Claimant held the position of Signal Maintainer in the Carrier's service. On January 12, 2017, the Claimant was given notice of an investigation in connection with the following charge:

"An investigation has been scheduled...for the purpose of ascertaining the facts in determining your responsibility, if any, in connection with your alleged failure to wear a seatbelt while operating vehicle 28695 on the Silsbee Sub on January 9[6], 2017 at approximately 1000 hours."

After a formal investigation on January 23, 2017, the Claimant was found in violation of MWSR 12.5 Seat Belts and was assessed a 30-Day Record Suspension and a One Year Review Period.

On January 9, 2017, Signal Supervisor Sean Paul Sisario received an email that the Claimant had triggered the DriveCam by driving into a rough and uneven road surface. Thereafter, the DriveCam recorded the Claimant operating a BNSF vehicle without wearing his seatbelt. The Carrier presented a screen shot from the DriveCam footage showing the Claimant driving his vehicle at 25.5 miles per hour down a road without wearing his seat belt. At the investigation, the Claimant admitted that he was the driver in the DriveCam video and that he was driving the BNSF Vehicle without his seat belt on.

The Carrier contends that it has presented substantial evidence of the Claimant's violation, as he admitted that he was driving without wearing his seat belt. The Carrier contends that Claimant was in violation of MWSR 12.5:

"Wear seat belts while operating or riding in equipment or vehicles that are equipped with them. Seat belts must be worn according to the manufacturer's guidelines posted in the vehicle or equipment. Lying down while wearing seat belts is prohibited.

Exception: Seat belts are not required when employees are operating vehicles while performing train inspections or coupling air hoses. When operating the vehicle in travel to and from such work activities, seat belts must be worn."

The Carrier contends that driving a BNSF vehicle without wearing a seat belt is a direct violation of MWSR 12.5 and discipline was properly assessed.

The Organization contends that the Claimant had only recently returned to the Carrier's service and would have benefited from a "refresher" to get back into the railroad mindset. The Organization contends that the Claimant was deprived of a fair and impartial hearing because it was not permitted to view the entire DriveCam video and the video was not part of the investigation record.

The Organization contends that the discipline is harsh and excessive, and that the Claimant would have benefitted from a counseling after his long absence from the Carrier's service.

Although the Carrier failed to make the entire DriveCam video part of the record and did not provide a copy to the Organization, this Board finds no violation of the Claimant's due process rights. In First Division Award 27098, the board, chaired by Referee Javits, found that failure to provide the full video to the Organization need not be fatal to the Carrier's case. In this case, the Claimant admitted to the conduct, so the video merely corroborated his own testimony. The Board concludes that there was no procedural violation in this case.

With respect to the merits, it is prudent to remind the parties that the Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

Where there has been an admission of guilt, no further proof is needed. The Carrier has provided substantial evidence that the Claimant was in violation of MWSR 12.5. Further, the Board finds no reason to disturb the penalty imposed by the Carrier, as the Claimant was rules-qualified and the wearing of a seat belt while driving is a straightforward rule that the Claimant would not need a "refresher" to understand.

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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 4th day of September 2019.