

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43886
Docket No. SG-45336
20-3-NRAB-00003-180648**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when 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 reinstatement to service with compensation for all time lost, including overtime pay, with all rights and benefits unimpaired, and with 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 against 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 July 11, 2017. Carrier's File No. 35-17-0030. General Chairman's File No. 17-056-BNSF-121-T. BRS File Case No.15896-BNSF. NMB Code No.173.”

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 was a Signal Maintainer operating BNSF vehicle 28695. On June 8, 2017, Signal Supervisor Sean Sicario received notification from DriveCam that the Claimant had been recorded operating his vehicle without wearing his seat belt. The DriveCam, upon review, was deemed to confirm this report. Since it was the Claimant's second serious violation during an active review period, he was dismissed.

At hearing the Claimant admitted that he did not have his seatbelt on, but said he only pulled his truck to the side to let someone by. He maintains he did not travel on any road or street, covered a distance of no more than twenty-five feet and never went over three miles an hour. The Organization argues these facts constitute mitigating circumstances which the Carrier failed to consider. In its view, the incident was minor in nature and created no safety hazard.

The Carrier counters that distance or slow speed are irrelevant to a rule that requires seatbelts when operating a vehicle. It notes the Claimant had recently broken the same rule against operating a vehicle without a seatbelt, concluding he was not a candidate for further progressive discipline.

The Carrier has provided substantial evidence that the Claimant violated a safety rule; indeed, the Claimant admitted as much. Though the limited nature of his transit is worthy of consideration, the fact remains that he was operating his vehicle and he was doing this without wearing his seatbelt. The rule at issue is clear. The Claimant's failure to respond positively to prior efforts to improve his performance by way of progressive discipline is also worthy of consideration. The Board's concern matches that of the Carrier: the Claimant gave no indication that any lesson had been learned from the opportunity offered by progressive discipline. The Carrier has provided substantial evidence of a safety rule violation and was within its rights to choose dismissal.

AWARD

Claim denied.

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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 28th day of January 2020.