

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43887
Docket No. SG-45337
20-3-NRAB-00003-180668**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel 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 L.C. Brown, 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 3-year Review Period to the Claimant, without BNSF providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on June 27, 2017. Carrier's File No. 35-17-0031. General Chairman's File No. 17-052-BNSF-20-C. BRS File Case No.15897-BNSF. NMB Code No. 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.

On May 25, 2017, Cicero Signal Supervisor John Ude received an email from the BNSF Remote Audit Department asking to identify an individual in BNSF Vehicle 27403 as there was a potential critical rule violation. Ude identified the Claimant, reviewed the DriveCam footage and found that the Claimant was not wearing his seatbelt. At the investigation, screenshots were introduced showing the Claimant driving without his seat belt.

The Organization's case rests on an alleged due process violation which it asserts is in breach of Rule 54 because Carrier did not include the rule regarding seatbelts as an exhibit in the on-property investigation. It contends that the Board functions as an appellate review, and must determine that a rule was violated before it can deny the claim. It argues the Board cannot accomplish this without having the rule in the record to see what it says. On the merits, the Organization maintains the seatbelt was worn, but had slipped down the Claimant's arm.

In the Carrier's assessment, the screenshots plainly show the Claimant with no seatbelt. It notes the Notice of Investigation put the Claimant on plain notice that he was being investigated for breaking the rule against operating a vehicle without wearing a seatbelt. It also points out that seatbelts were mentioned no less than 38 times during the investigation. Under these circumstances, it contends that no due process violation can reasonably be found.

The Board finds the Organization's due process argument persuasive. We cannot find the Claimant in violation of a rule that is not part of the record. The Board is persuaded that a general rule against driving without a seatbelt was known or should have been known by employees. However, our assessment is that Carrier rules are not good fodder for the equivalent of 'judicial notice' because the parties must be at liberty to argue about the specific terminology of those rules as applied in individual factual circumstances. We find the lack of an applicable rule in the record to be fatal to the Carrier's case.

AWARD

Claim sustained.

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 28th day of January 2020.