

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 43888
Docket No. SG-45383
20-3-NRAB-00003-190055

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 D.D. Hammond, 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 September 7, 2017. Carrier's File No. 35-17-0040. General Chairman's File No. 17-072-BNSF-121-T. BRS File Case No. 15882-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 Carrier asserts that on August 11, 2017, the Claimant drove BNSF Vehicle 25056 while talking on a cell phone. When he braked hard, DriveCam was triggered, providing video from which photographs were pulled. At the investigatory hearing, the Claimant admitted operating his vehicle while using his cell phone. (TR 26-27) Insofar as this was his second level S violation within an active review period, he was dismissed.

The Organization maintained it was denied the opportunity to review the video as part of the hearing, and therefore was denied a fair hearing. In its assessment, the photographs only show the Claimant holding a cell phone and fail to establish that he actually used it. The Claimant stated he was using the speaker on the phone and therefore did not compromise safety. The Organization faults the Carrier for failing to provide a Bluetooth device.

The DriveCam still shots show the Claimant holding his cellphone in front of steering wheel. At one point he was looking down at the phone while traveling at almost 40 mph. His thumb appears to be positioned over the face of the phone, indicating he was not hands free. He admitted talking on phone. We do not find the applicable rule at the time confusing in prohibiting this particular conduct. He was not dismissed after his prior two violations, but was given an opportunity to learn from his mistakes. Given these facts, we find the Carrier has met its burden of proof.

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 28th day of January 2020.