

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44359  
Docket No. SG-45731  
21-3-NRAB-00003-190526**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens 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 J.R. Eisenbise, 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 June 15, 2018. Carrier's File No. 35-18-0018. General Chairman's File No. 18-032-BNSF-33-K. BRS File Case No. 16047-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.

At the time of this dispute, the Claimant held the position of Signal Maintainer in the Carrier's Signal Department. On May 31, 2018, the Claimant and another maintainer were working on a crossing at M.P. 56.08, while the road was closed for construction. The Claimant pulled ahead to line up his front hy-rail gear and rolled off the edge of the crossing pad causing the DriveCam to activate. The Claimant called his Manager to inform him of the incident. The Manager also received the DriveCam footage wherein he observed the Claimant not wearing his seat belt.

On June 7, 2018, 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 and determining your responsibility, if any, in connection with your alleged failure to wear seat belt while operating company vehicle, MP 56.08, Topeka Subdivision, at approximately 0943 hours on May 31, 2018 while operating Hy-Rail."**

After a formal investigation on June 15, 2018, the Claimant was found in violation of MWSR 12.5, Seat Belts, and MWSR 14.1.2, Seat Belts, and was assessed a 30-day record suspension with a one-year review period.

In a letter dated August 28, 2018, the Organization appealed the Carrier's discipline. The Carrier responded to and denied the appeal. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Carrier contends that it has shown with substantial evidence that the Claimant violated MWSR 12.5, Seat Belts, and MWSR 14.1.2, Seat Belts, which state,

**"MWSR-12.5 Seat Belts**

**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.

**MWSR 14.1.2 Seat Belts**

**Wear seat belts while operating or riding in equipment or vehicles that are equipped with them.**

**Seat belts may be removed when:**

- **The field of view is obstructed and it is necessary to stand to obtain a clear view of the surroundings, or**
- **Seated in the boom operator seat of grapple trucks or dump trucks, or the upper rotating structure of cranes (e.g., Locomotive Cranes, Truck Cranes, Rail Bound Track Cranes, etc.)”**

The Carrier contends that the DriveCam video revealing the Claimant driving without his seat belt was shown during the investigation and still shots from the video were made exhibits in the record. The Carrier contends that the footage clearly show that the Claimant was not wearing his seat belt and none of the exceptions in the rule applied.

The Carrier contends that even if the Claimant were driving on a work area, he would be expected to wear his seat belt. The plain language of the rules is clear, there are only limited exceptions for not wearing a seat belt, and none of them are permissible when the vehicle is being used for travel, which is the case here. The Carrier contends that the evidence shows the Claimant not wearing his seat belt for at least 8 seconds, which was more than enough time to set on the tracks.

The Carrier contends that the penalty for this serious violation was neither harsh nor arbitrary but consistent with its Policy for Employee Performance Accountability (“PEPA”). The Carrier further contends that under these specific circumstances, the assessed discipline was lenient considering the nature of the offense, the Claimants’ records, arbitral precedent, and the PEPA.

The Organization contends that it is understood that when an employee is setting on the tracks for hi-railing, it is permissible not to wear a seat belt. The Organization contends that the Claimant testified that he was setting on at the crossing, so a seatbelt wasn’t required. The Organization contends that the penalty was harsh and excessive, and the Claimant should have received at most, a coaching session.

There is no dispute that the Claimant was not wearing his seat belt while operating the vehicle. He admitted as much during his testimony. The Organization maintains that there is an exception for not wearing a seat belt while setting on the hi-rails. While this exception is not listed in the rules, the Carrier does not dispute that it is sometimes permitted. But, in this case, according to the Carrier, the Claimant had more than enough time to set on and yet did not put his seat belt on.

The Carrier provided substantial evidence of Claimant's failure to wear a seat belt while operating a Carrier vehicle. Claimant admitted as such. But the Organization has not shown that any exception to the rules applied to this situation. The penalty imposed was consistent with the Carrier's PEPA policy, and was therefore, neither arbitrary nor capricious.

**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 6th day of January 2021.