

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44657  
Docket No. SG-46260  
22-3-NRAB-00003-200609**

**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 (Former Burlington Northern**  
**(Railroad 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.B. Taylor, for any mention of this matter to be 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 (Serious) 30-day record suspension with a 1-year review period to the Claimant, without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on February 15, 2019, and resumed on March 1, 2019. Carrier's File No. 35-19-0018. General Chairman's File No. 19-033-BNSF-33-K. BRS File Case No. 16169-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 this dispute developed, the Claimant was assigned as the Kansas City Argentine Signal Maintainer in Carrier's Signal Department. On January 31, 2019, the Claimant's Supervisor, Jesse Slay, received an email from the remote audit desk regarding an employee driving his company vehicle without wearing his seat belt. Supervisor Slay viewed the DriveCam video and concluded that the Claimant was driving BNSF vehicle 26978 at approximately 14 mph without wearing his seat belt.

On that same day, Supervisor Slay called the Claimant into his office for a coaching and counseling session regarding the incident. The Claimant acknowledged the infraction and signed the coaching and counseling form.

On February 4, 2019, 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 a seat belt while driving company vehicle 26978 on January 30, 2019 at approximately 1630 hours while working as a signal maintainer, per DriveCam Event ETWL00712. The date BNSF received first knowledge of this alleged violation is January 31, 2019.

After a formal investigation on February 15, 2019, the Claimant was found in violation of MWSR 12.5, Seat Belts, and MWSR 14.1.2, Seat Belts, and assessed a Level S, 30-day record suspension with a 1-year review period.

By letter dated May 17, 2019, the Organization presented a claim to the Carrier which was denied by letter dated July 10, 2019. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Carrier contends that it has shown with substantial evidence that the Claimant was not wearing his seatbelt while operating BNSF Vehicle 26978. The Carrier points out that it presented DriveCam footage and the Claimant admitted the violation during the investigation. The Carrier contends that it has presented sufficient proof that the Claimant was in violation of MWSR 12.5 and MWSR

14.1.2.

The Carrier contends that there were no procedural irregularities, and that the Claimant was provided a fair and impartial investigation. Finally, the Carrier contends that simply because a coaching and counseling session was held, it is not precluded from holding an Investigation. The Carrier contends that the processes are different and should not be considered together.

The Carrier contends the level of discipline is appropriate. BNSF's Policy for Employee Performance Accountability ("PEPA") classifies this type of violation as a serious one and thus a thirty-day suspension was appropriate.

The Organization contends that although the Claimant was coached and counseled, the Carrier improperly subjected him to further discipline for the same incident. The Organization contends that the Carrier failed to provide substantial evidence to support its position that coaching and counseling is not discipline. Thus, the Organization contends, the matter should have been closed when the Claimant signed the coaching and counseling form.

The Organization contends that the issue is whether the Carrier can be permitted to assess additional discipline for a single offense. The Organization contends that the Carrier violated Rule 54(G) by doing so.

There is no doubt that when Supervisor Slay called the Claimant into his office for a coaching session, he was aware of all the facts surrounding the Claimant's alleged violation. During the session, the Claimant acknowledged his violation and promised to do better. He signed the coaching and counseling form.

Once an employee has been disciplined, it is improper to thereafter impose a more severe penalty based on the same underlying facts. The coaching and counseling form was presented as final resolution of the charges arising out of the DriveCam incident and the Claimant accepted the terms. The Carrier apparently thought the discipline imposed by the supervisor was inadequate and sent the Claimant notice of an Investigation. A coaching and counseling session appears on the employee's transcript. In the Carrier's PEPA, it is treated as the first step in the progressive disciplinary process. It is a disciplinary penalty.

This Board finds that the second discipline of a thirty-day record suspension with a 1-year review period improperly placed the Claimant in double jeopardy for

the same misconduct for which the Carrier had already imposed a coaching and counseling. The suspension must be rescinded, and the coaching and counseling accepted by the Claimant will be reinstated.

**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 15<sup>th</sup> day of December 2021.