

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44663  
Docket No. SG-46266  
22-3-NRAB-00003-200943**

**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 T.S. Humble, 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 June 14, 2019.” Carrier's File No. 35-19-0031. General Chairman's File No. 19-049-BNSF-161-NM. BRS File Case No. 16262-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 was assigned to a Signal Inspector position in the Carrier's Signal Department.

On April 13, 2018, while driving company vehicle 28922 near interstate 40, the Claimant was involved in a vehicle accident. After merging into a traffic lane, the Claimant realized that the truck in front of him was at a complete stop on the road just ahead of him in his lane. The Claimant was able to stop in time to prevent major damage, but not to stop a collision. DriveCam footage clearly shows the Claimant being thrust forward in his seat as the collision occurs, along with the damage to the bumper from the accident. The Claimant did not promptly inform his supervisor of the accident.

The Claimant was on a Medical Leave of Absence (MLOA) between April 16, 2018, through August 2019. On May 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 report an accident while driving company vehicle 28922, on April 13, 2018, at approximately 1659 hours CST, near Interstate 40, between S. Crockett Street and S. Bonham Street, per DriveCam Event ETMZ18512, while working as a signal inspector. The date BNSF received first knowledge of this alleged violation is May 3, 2018.

After a formal investigation on June 14, 2019, the Claimant was found in violation of MWSR 12.1.1, General Requirements, and MWSR 28.2.5, Reporting, and was dismissed from the Carrier's service. Those rules provide, in pertinent part:

**S 12.1.1 General Requirements**

- Promptly report traffic incidents, accidents, and vehicle damage, no matter how minor, to the proper manager.

**S 28.2.5 Reporting**

**E. Other Accidents Involving Damage or Loss**

All other accidents (theft, vandalism, company vehicle accidents, fires, etc.) involving damage or property loss that do not result from on-track accidents must be immediately reported to the proper manager and the prescribed form completed.

The Carrier contends that it has shown with substantial evidence that the Claimant violated MWSR 12.1.1 and MWSR 28.2.5. The Carrier points out that DriveCam video clearly shows the Claimant driving the vehicle with another car close in front of him. The Claimant collided with the car in front of him and he failed to contact his supervisor about the accident. The Claimant's supervisor testified that the accident was never reported to him.

The Carrier contends that the Claimant was provided a fair and impartial hearing, despite his absence at the hearing. The Carrier contends that the initial notice was timely and that the parties agreed to six postponements over 406 days. The Carrier contends that when the Claimant failed to comply with a request to provide his medical restrictions, it was justified in convening the hearing without him.

The Carrier contends that BNSF's Policy for Employee Performance Accountability ("PEPA") classifies this type of violation as Stand Alone Dismissible. The Carrier contends that the assessed discipline was not excessive, arbitrary, or unwarranted.

The Organization contends that the Carrier did not fulfill its responsibility to provide a fair and impartial investigation. The Organization contends that the Carrier failed to hold the Investigation within 15 days of its first notice of the alleged wrongful conduct, in violation of Rule 54(A) of the parties' Agreement.

The Organization contends that the Carrier prejudged the Claimant's guilt nearly a year before the Investigation hearing when it concluded, "The event resulted in a collision."

The Organization contends that the Carrier has failed to present substantial evidence of the Claimant's alleged violation. The Organization contends that the record fails to show that a collision took place as the Carrier did not introduce the DriveCam video as an exhibit. The Organization contends that the Carrier's evidence only tends to show that the Claimant braked hard to reduce his speed. If

the Carrier failed to prove the accident, they failed to prove that the Claimant failed to report it.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant.

The un rebutted evidence presented at the Investigation showed that the Claimant was involved in a collision and that he failed to report it to his supervisor. Thus, the Carrier has met its burden of proving the Claimant's violation of MWSR 12.1.1 and MWSR 28.2.5.

The Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. In addition, we cannot say that the disciplinary penalty was unreasonable or arbitrary. Thus, the Carrier's decision must be upheld.

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