

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44846  
Docket No. MW-47356  
23-3-NRAB-00003-220215**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**  
**(BNSF Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline [thirty (30) day Level S record suspension with three (3) year review period] imposed upon Mr. W. Schaffer, by letter date August 24, 2020, for alleged violation of MWSR 12.5 Seat Belts was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-21-D040-2/10-21-0026 BNR).**
- (2) The appeal\* as presented, by letter dated January 14, 2021, to General Director Labor Relations Joe Heenan shall be allowed as presented because said claim was not disallowed by Mr. Heenan in accordance with Rule 42.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant W. Schaffer shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.**

**\*The initial letter of claim will be reproduced within our initial submission.”**

**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.

**Factual Background:**

Following investigation, the Carrier concluded that Claimant had operated his vehicle without wearing a seatbelt in violation of Maintenance of Way Safety Rule (MWSR) 12.5 Seat Belts. He was assessed a thirty-day record suspension with three-year review period. The Organization protested the discipline, and the claim was processed through the grievance procedure to consideration by the instant Board of Adjustment.

**Position of Organization:**

Claimant has had no prior discipline during his thirteen years of railroad service. Claimant explained he had a “brain fart,” and simply lost his presence of mind for a matter of seconds while performing work off road. There was clearly no intent whatsoever by Claimant to violate any Carrier rule and his lapse was minimal.

**Position of Carrier:**

The DriveCam recording and still shot photos from the event show Claimant operating his company vehicle without wearing his seat belt; the vehicle was in motion. In the Carrier’s view, this is adequate to establish that he was in violation of applicable rules.

**Analysis:**

At hearing the Carrier presented evidence of Claimant’s resignation which had not previously come to light. Insofar as Claimant has forfeited his right to the claim, the claim must be dismissed.

**AWARD**

Claim dismissed.

**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 10<sup>th</sup> day of March 2023.