

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45262  
Docket No. SG-47630  
24-3-NRAB-00003-220478**

**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 Corporation**

**STATEMENT OF CLAIM:**

**“Claim on behalf of R. Breedlove, 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 March 11, 2021. Carrier’s File No. 35-21-0036, General Chairman’s File No. 21-067-BNSF-121-T, BRS File Case No. 5330, NMB Code No. 204 – Minor Discipline: Miscellaneous/Other Not Specified Above”**

**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 the incidents herein, the Claimant was assigned as a Signal Inspector in Conroe, Texas in the Carrier’s Signal Department. On March 4, 2021, the**

Claimant was operating a handheld cellular device while driving a Carrier-owned motor vehicle. Due to the Claimant's hard braking, the Drive Cam in his vehicle was triggered and recorded the Claimant with his cellular phone in his hand while operating the Carrier's vehicle. The Claimant notified his supervisor of the event.

On March 5, 2021, the Carrier emailed to the Claimant a notice of an investigation in connection with the following charge:

An investigation has been scheduled at 0900 hours, Thursday, March 11, 2021...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged handling of an electronic device while operating a BNSF vehicle on March 4, 2021 on the Conroe Subdivision.

After a formal investigation on March 11, 2021, the Claimant was found in violation of (MOWR) 1.10 – Games, Reading, or Electronic Devices, and was assessed a 30-day record suspension with a one-year review period.

In a letter dated April 28, 2021, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated June 25, 2021. 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 presented substantial evidence of the Claimant's violation of MWOR 1.10. The Carrier contends that the Claimant admitted that he was in violation of the rule, and where there is an admission of guilt, there is no need for further proof. In addition, the DriveCam screenshots clearly show the Claimant preoccupied using his cellphone while stopped at a red light, causing the Claimant to drive forward while the car in front of him remained stopped and leading to the hard braking which triggered the DriveCam to record his actions.

The Carrier denies that there was a time-limit violation. The Carrier recognizes that notices have been hand-delivered in the past, but contends that it is not restricted from delivering Investigation Notices via electronic mail. The Carrier contends that both the Claimant and his representative received notification of the Investigation on Friday, March 5, 2021, six days in advance of the investigation and in compliance with Rule 54. The Claimant admitted that he saw the email and printed out the Investigation Notice on Monday, March 8, 2021. The Carrier contends that it cannot be faulted for the Claimant's choice to wait until Monday to read the email.

The Organization contends that the Carrier violated Rule 54 of the Agreement when it failed to comply with the minimum notification requirements outlined in Rule 54(C) before disciplining the Claimant. The Organization contends that this procedural violation warrants a sustaining award without regard to the merits of the claim.

The Organization contends that Rule 54(C) requires that the employee and his representative be given written notice of an Investigation five days prior to the hearing date. In this case, the Carrier has violated the time limit provisions as the Carrier presented no evidence that the Claimant or his representative received written notice five days prior to the Hearing Day. The only receipt date in the record is March 8, which is only three days prior to the hearing.

The Organization contends that while the parties agreed to use email exchange for correspondence described in Rule 53, there is no similar agreement in Rule 54. The Organization contends that if the parties intended to allow for Notices of Investigation to be delivered by email, they would have similarly amended Rule 54.

Rule 54(C) of the controlling Agreement provides,

C. At least five (5) calendar days' advance written notice of the investigation outlining specific offense for which the hearing is to be held shall be given the employee and appropriate local organization representative, in order that the employee may arrange for representation by a duly authorized representative or an employee of his choice, and for presence of necessary witnesses he may desire.

The evidentiary record demonstrates that on March 8, 2021, the Claimant received an email notification of the investigation to be held on March 11, 2021. In other words, the notice was not given to the employee at least five calendar days in advance of the hearing. The Agreement is clear and unambiguous in this regard.

While the parties have agreed to email exchange with respect to certain correspondence, they have not done so in regard to Notices of Investigation. Certainly, this Board is without authority to amend the language that the parties have chosen to allow for this method of delivery. The Board's role is to enforce the clear and unambiguous language of the parties' Agreement.

We find that the Carrier failed to comply with the time limit provision of Rule 54(C) in this case. In such circumstances, the claim must be fully sustained without consideration of its merits.

**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 14<sup>th</sup> day of May 2024.