

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45341  
Docket No. SG-48030  
25-3-NRAB-00003-230543**

**The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Canadian Pacific Railway**

**STATEMENT OF CLAIM:**

**“Claim on behalf of P.C. Swendsrud, for compensation for all time lost, including overtime, with all rights and benefits unimpaired, and with any reference to this matter removed from his personal record; account Carrier violated the current Signalmen's Agreement, particularly Rule 32, when it assessed the harsh and excessive discipline of a 20 day suspension without pay 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 14, 2022. Carrier's File No. 2022-00029707, General Chairman's File No. 2022-00029707, BRS File Case No. 6247, NMB Code No. 203 - Minor Discipline: Safety/Operating Rules.”**

**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.**

On May 23, 2022, a manager arrived at the Paynesville Depot to inventory materials at approximately 1600 hours, when he saw the Claimant Peter Swendsrud sitting in his truck. When he walked up to the truck, he saw that the Claimant was watching some video content on his personal phone.

By letter dated June 8, 2022, the Claimant was notified to attend a hearing to develop the facts and place responsibility, if any, in connection with his allegedly being observed at the Paynesville Depot using his personal cell phone while on duty without approval. The notice indicated possible violation of US Rulebook for Engineering Employees OTS 29.1 (E) Electronic Devices. The hearing was held June 14, 2022, after which the Claimant was found to be in violation of the cited rule, and by notice dated June 28, 2022, he was assessed a 20-day suspension.

The Organization submitted the instant claim, which the parties handled on the property according to the applicable agreement. The matter now comes to us for resolution.

The Organization challenges the discipline assessment as being harsh and excessive, arguing that the Carrier failed to properly consider mitigating circumstances. It states that the Claimant has consistently demonstrated dedication and reliability in his work for the Carrier, and that he did so on the date in question. The Organization notes the Claimant's testimony that he had worked on his assigned projects beginning at 0600 hours, and that after he ran out of materials, he offered to assist field personnel with FRA testing, but that he had not received approval from his managers to do so. It states that he then performed housekeeping tasks before taking a break.

The Organization asserts that the Claimant was not engaged in a safety related task at the time of the incident in question, and it points to the language of the cited rule, which refers to electronic devices which entail the risk of distracting the employee from performing a safety related task. It asserts that the Carrier's decision to issue a 20-day suspension for a first violation of the electronic device policy is excessive, noting that it is as severe as the penalty for leaving a mainline switch improperly aligned. It also points out that the notice of discipline incorrectly stated that the Claimant "displayed improper behavior towards [his] manager," and it posits that this indicates that the Carrier did not properly consider the evidence before assessing the suspension. The Organization states that the Carrier arbitrarily ignored principles of progressive discipline in assessing such a suspension, and it argues that the correct course of action would have been much lesser discipline, such as coaching, and it urges that the claim be sustained.

The Carrier, on the other hand, maintains that there is no reason to disturb the discipline assessment. It states that the Claimant received a fair and impartial investigation, and that the record contains substantial evidence to support the finding of guilt. It points to the testimony of the Claimant's manager who observed the Claimant watching video on his personal electronic device, as well as to the Claimant's testimony that he was not on a recognized break. The Carrier cites the language of the rule in question, which states that employees are prohibited from using personal electronic devices unless certain exceptions apply, and it asserts that none of those exceptions were applicable in this instance.

With respect to the discipline assessment, the Carrier states that the Claimant's violation of the electronic device rule constituted a Major offense under its Hybrid Discipline and Accountability Guidelines. It states that under the guidelines, the Claimant was assessed the minimum sanction for a first Major violation. The Carrier asserts that there was nothing arbitrary or capricious about the assessment here, and it requests that the claim be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

Here, we believe the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that the Claimant was in violation of the cited rule when he was viewing video content on his personal electronic device. While there is an exception in the rule which permits use of a personal electronic device during a recognized break, the Claimant admitted at the hearing that he was not on a recognized break.

Having found that the rule violations were established, we turn to the level of discipline assessed. The Carrier has every right to expect strict compliance with rules regarding usage of electronic devices, as the potential safety concerns related to the distractions associated with such devices cannot be denied. In this case, however, we do find that there are mitigating circumstances which warrant a lesser sanction for a first offense of any type. The Claimant's record contains no prior discipline entries, indicating to us that he has worked safely for the majority of his career, and contrary

to the statement in the notice of discipline, there is no indication that the Claimant displayed improper behavior towards his manager. In these specific circumstances, we find that a 5-day suspension would be more than sufficient to impress upon the Claimant the necessity of compliance with the rules pertaining to electronic devices. Therefore, we conclude that the Claimant should be paid for time lost in excess of five days.

**AWARD**

Claim sustained in accordance with the findings.

**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 31<sup>st</sup> day of October 2024.