

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

vs.

**BNSF RAILWAY COMPANY**

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Case No. 516 – Award No. 516 – B. Sinclair  
Carrier File No. 14-19-0157  
Organization File No. 2413-SL13C3-192

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Brett Sinclair (6467138), Seniority date July 13, 1994 for reinstatement with seniority rights restored and all entitlement to and credit for, benefits restored, including vacation, and health insurance benefits. The Claimant shall be made whole for all financial losses as result of the violation, including compensation for: 1) straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the Claimant while wrongfully suspended); 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service. 3) Overtime pay for lost overtime opportunities based on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended. 4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly dismissed from service commencing March 21, 2019, continuing forward and/or otherwise made whole. All notations of the dismissal should be removed from all Carrier records.

**FINDINGS:**

Public Law Board No. 5850, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, B. Sinclair, had been employed by the Carrier since 1994. On March 21, 2019, following an investigation, the Carrier found Claimant guilty of handling an electronic device while operating a Company vehicle on January 15, 2019. The Carrier found that Claimant had violated Maintenance of Way Operating Rule (MOWOR) 1.10 Games, Reading, or Electronic Devices. The Carrier dismissed him from service.

At the time of the incident, Claimant was the Foreman on mobile maintenance gang TMGX2050. While he was operating a Company truck on the date at issue, the DriveCam unit in his truck was triggered.

Carrier Division Engineer Jason Watkins testified at the investigation that a local supervisor sent him the resulting video from the inside of Claimant's vehicle. Screen shots from the video were entered into the hearing record. Mr. Watkins explained that the video showed Claimant looking at the electronic device for 12 seconds and that when he looked up the stop light in front of him was changing to red, and he hit his brakes abruptly, overshooting the light and triggering the Drive Cam. The video, Mr. Watkins explained, then shows Claimant attempting to back up.

Claimant acknowledged at the investigation that at the relevant time he was looking down at an electronic device. He acknowledged that he had been handling the cell phone, stating that he believed he had picked it up to shut it off, that it might have rung "or something," and that he did not know.

Claimant previously received a Formal Reprimand with a one-year review period on November 4, 2016, for failing to remain alert and attentive while operating Company equipment, resulting in property damage. On September 11, 2017, Claimant received a Level-S 30-day Record Suspension with a three-year review period for failing to comply with his supervisor's directives regarding pay claims. Claimant received another Formal Reprimand with a one-year review period on August 1, 2018, for failing to safely operate a Company vehicle. He received another Level-S 30-day Record Suspension with a three-year review period on August 31, 2018, for falsifying pay claims.

We have carefully reviewed the record in its entirety. First, we find no procedural irregularity which denied Claimant his right to a fair and impartial investigation.

On the merits, we conclude that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. As the Carrier asserts, the video shows Claimant looking down, and he admitted that he had handled the cell phone while driving, maintaining that he picked it up to turn it off. This is a clear violation of the applicable Carrier Rules, and, it is well settled, such an admission is sufficient to satisfy the Carrier's burden of proving Claimant's guilt by substantial evidence. Moreover, while the Organization argues that Claimant only looked at the cell phone for a fraction of a second, the video shows him looking down for multiple seconds, long enough that he apparently did not see a red light changing and slammed on his brakes, triggering the Drive Cam.

With regard to the penalty, this was a serious violation which caused Claimant to run a red light because he did not see it changing and could have resulted in far more serious consequences. Claimant was within the review period for two previous serious violations, in 2017 and 2018 which, pursuant to the Carrier's Policy for Employee Performance and Accountability (PEPA), subjected him to dismissal for any additional serious violation committed. We cannot say that the Carrier's decision to assess that penalty represents an unfair, arbitrary or discriminatory exercise of the Carrier's discretion to determine the appropriate disciplinary sanction.

**AWARD**

**Claim denied.**

  
**DAN NIELSEN**  
Neutral Member

  
**LOGAN McKENNA**  
Carrier Member

  
**JEFFERY L. FRY**  
Organization Member

**Dated this 16 day of May, 2023.**