

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 211, (Case No. 211)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION – IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Samantha Rogers, Carrier Member
David R. Scoville, Employee Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing July 6, 2016, when Claimant, Clarence Newell (1239706), was dismissed for use of a hand held device and failure to follow local vehicle laws when he failed to make a complete stop at an intersection. The Carrier alleged violation of Maintenance of Way Operating Rule 1.10 – Games, Reading, or Electronic Devices and Maintenance of Way Safety Rule 12.1.1 – General Requirements.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall reinstate Claimant, remove from the Claimant’s record this discipline with all rights unimpaired and pay for all wage loss including overtime commencing July 6, 2016, Continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-16-0349) (Organization File No. 2419-SL13C3-1621)**

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

The facts indicate that on June 6, 2016, Claimant was employed as a Maintenance of Way Track Supervisor and it was alleged that on that date he was driving unsafely and because of that allegation the Claimant was directed to attend a formal Investigation on July 16, 2016, concerning in pertinent part the following charge:

“...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged use of a hand held device and failure to follow local vehicle laws, when you did not make a complete stop at the intersection of Calwa and Pullman at approximately 1450 hours while driving BNSF vehicle 27289 in Fresno, CA. The date of this alleged violation is June 6, 2016.

This investigation will determine possible violation of MWOR 1.10 Games, Reading, or Electronic Devices and MWSR 12.1.1 General Requirements.”

On July 6, 2016, Claimant was notified that he had been found guilty as charged and was dismissed effective immediately.

It is the position of the Organization that the record shows that the Claimant admitted that he used his phone in hands free mode and never denied making a slow rolling stop on June 6, 2016. However, it argued that the discipline was extreme especially for a valuable 19 year employee and it requested that the dismissal be rescinded and the claim be sustained as presented.

It is the Carrier’s position that on June 6th the Claimant operated a vehicle in an unsafe manner when he was distracted with phone use and did not make a proper stop at a stop sign which was captured on the Drivecam video. Lastly, it argued the record is clear that the Claimant was guilty as charged and the discipline was appropriate and it asked that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the transcript and record of evidence and it is determined the Investigation and appeal process met the guidelines of Rule 13(a) and Appendix No. 11.

There is no dispute between the parties that Claimant admitted on pages 31 and 32 of the transcript that he violated MWOR 1.10 and MWSR 12.1.1, therefore, it is clear that the Carrier met its burden of proof that the Claimant was guilty as charged.

P.L.B. No. 7048

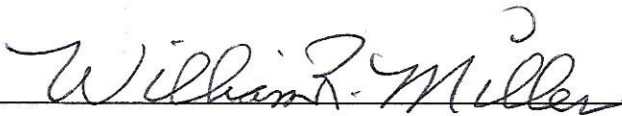
Award No. 211, Case No. 211

Page 3

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately 19 years of service with four prior disciplinary events and this was the Claimant's third Serious Level S violation within an active review period. The discipline assessed was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA). The Board is sympathetic to a long-term employee, however, leniency is the prerogative of the Carrier and is not that of the Board, therefore, the Board finds and holds that the discipline will not be disturbed and the claim will remain denied because it was not contrary to PEPA, nor was it arbitrary, excessive or capricious.

AWARD

Claim denied.



William R. Miller, Chairman and Neutral Member



Samantha Rogers, Carrier Member



David R. Scoville, Employee Member

Award Date: 1/5/18