

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 374, (Case No. 374)**

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

**vs**

**BNSF RAILWAY COMPANY**

William R. Miller, Chairman & Neutral Member  
Michelle McBride, Carrier Member  
Louis R. Below, Employee Member

**STATEMENT OF CLAIM:**

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

- 1. The Carrier violated the Agreement commencing October 28, 2020, when Claimant Devonte Torres (3045663) was dismissed for handling of an electronic device while operating vehicle 27633 on September 8, 2020, at approximately 1827 hours on the Conroe Subdivision in violation of MWOR 1.10.**
- 2. As a consequence of the violation referred to in part 1, the Carrier shall remove this discipline with all rights unimpaired and pay for all wage loss including overtime (if applicable) as well as all health, dental and vision care premiums, deductibles and co-pays that he would have not paid if he had not been disciplined commencing October 28, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”  
(Carrier File No. 14-20-0403) (Organization File No. 2421-SL13C3-2015)**

**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 September 9, 2020, Roadmaster C. Matthews was notified by email of a Drive Cam event in which Claimant was seen handling an electronic device (cell phone) while driving a Carrier vehicle at approximately 1827 hours on September 8, 2020, and because

of that Claimant was directed to attend a formal Investigation on September 20, 2020, which was mutually postponed until September 22, 2020, concerning in pertinent part the following:

**“...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 vehicle 27633 on September 8, 2020 at approximately 1827 hours on the Conroe Subdivision.**

**This investigation will determine possible violation of MWOR 1.10 Games, Reading, or Electronic Devices.”**

On October 28, 2020, Claimant was notified that he had been found guilty as charged and was dismissed effective immediately.

This is the first to two dismissal cases involving the same Claimant for the same alleged offense that occurred on the same date (September 8, 2020). The only difference between the subject dispute and the second case (Award No. 375 of this Board) is the instant incident occurred later on the same day.

It is the Organization’s position that the evidence, exhibits and testimony show there was no intent on the part of the Claimant to violate any Carrier Rules. It argued Claimant was unaware of any Rule regarding touching electronic devices. It further argued Claimant’s tenure as an employee of the Carrier consisted of being furloughed the majority of that time and Claimant had very little experience working in the field and his training had not included coverage of all Rules including MWOR 1.10. Lastly, it argued Claimant would have never touched his cell phone if he had known it was prohibited, thus, it reasoned that Claimant’s dismissal was the result of the Carrier’s failure to properly train Claimant. It asked that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that the claim is procedurally defective because it failed to identify the governing Agreement under which it was filed or any Rule that was allegedly violated. It asked that the claim be dismissed and/or denied without reviewing the merits.

Turning to the merits, the Carrier stated Claimant’s Supervisor established with three screen shots from the Drive Cam video that Claimant violated MWOR 1.10 by handling a cell phone while operating a Carrier vehicle. Additionally, during the Investigation, Claimant admitted he had his phone in his hand while operating a Carrier vehicle. It concluded, that after proving Claimant’s guilt, it appropriately disciplined Claimant, therefore, it asked that the discipline not be disturbed and the claim remain denied.

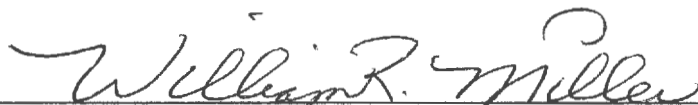
The Board has reviewed the transcript and record of evidence and is not persuaded by the Carrier’s procedural argument. It is determined that the case will be resolved on its merits.

Review of the record reveals that Claimant was qualified as Trackman that had passed the Book of Rules and that the parties and Claimant are not in dispute that Claimant had his cell phone in his hand on September 8, 2020, while operating a Carrier vehicle in violation of MWOR 1.10. Substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had a little over two years of service with one Active Record Suspension on his Disciplinary Record and was subject to possible dismissal. The discipline was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA). The discipline was appropriate and 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.

A handwritten signature in black ink, reading "William R. Miller", written over a horizontal line.

William R. Miller, Chairman & Neutral Member

A handwritten signature in blue ink, reading "Michelle D. McBride", written over a horizontal line.

Michelle McBride, Carrier Member

A handwritten signature in blue ink, reading "Louis R. Below", written over a horizontal line.

Louis R. Below, Employee Member

Award Date: July 25, 2022