

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 375, (Case No. 375)**

**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 0709 hours near MP 70.33 on the Conroe Subdivision.**
- 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. 14-20-0402) (Organization File No. 2421-SL13C3-2014)**

**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 0709 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 0709 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 second of two dismissal cases involving the same Claimant for the same alleged offense on the same date (September 8, 2020). The only difference between the subject dispute and the first case (Award No. 374 of this Board) is the instant incident occurred earlier on the same day. The skillful arguments of the respective parties need not be reiterated in this instance as the question of Claimant's alleged guilt has become academic because in Award No. 374 this Board found that Carrier's decision to dismiss Claimant was appropriate. Therefore, the Board finds and holds that the dismissal in Award No. 374 cannot be overridden and the issue raised in the instant case is now moot, thus, the claim is dismissed. However, we would add that a review of the transcript reveals that the Carrier met its burden of proof that Claimant was guilty as charged.

**AWARD**

Claim dismissed



William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: July 25, 2022