

**PUBLIC LAW BOARD NO. 7564**

Case No. 61/Award No. 61  
Carrier File No. 10-15-0168  
Organization File No. C-15-D040-14  
Claimant: Saul R. Interrial

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BNSF RAILWAY COMPANY )  
 )  
-and- )  
 )  
BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYEES DIVISION )  
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**Statement of Claim:**

By letter dated March 25, 2015 Section Foreman Saul Interrial was assessed a Level S 30 Day Record Suspension and a one-year review period because of his use of a cellular phone in violation of MOWOR 1.10 Games, Reading, or Electronic Devices. The May 6, 2015 claim from the Organization, George Loveland, Vice General Chairman, appealing the discipline stated: "Due to the Claimant being improperly disciplined the discipline should be removed immediately as requested following the investigation . . ."

**Facts:**

By letter dated January 27, 2015 the Claimant was informed that "An investigation has been scheduled for 0900 hours, Thursday, February 5, 2012 at . . . Corsicana, TX . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in conjunction with your alleged use of a cellular phone while operating vehicle 23447 on January 22, 2015 @ 1649 hours on the Conroe Sub. The date BNSF received first knowledge of this alleged violation is January 23, 2015." As the result of two mutually agreed-upon postponements, the investigation was conducted in Corsicana, TX on March 5, 2015.

**Carrier Position:**

The Carrier points to the DriveCam video that shows the vehicle moving while the Claimant had his cell phone in hand. Substantial evidence comes from the Claimant's admission that with phone in hand, he swiped it to unlock the phone. The investigation was fair and impartial as the Organization cannot show that the Conducting Officer submitted evidence and any procedural errors, if committed, did not result in harm or prejudice to the Claimant. If there is to be leniency, such decisions are the Carrier's and not the Board's. Since there was a record

suspension, if the claim is sustained, the only appropriate remedy is removal of the discipline from the Claimant's records.

**Organization Position:**

The Organization asserts that the DriveCam was improperly, unilaterally implemented by the Carrier, who did not negotiate with the Organization about use of the technology. What activated the DriveCam in the Claimant's vehicle is unclear. Photos submitted by the Carrier are unclear. The DriveCam video is not a part of the evidentiary record. The Conducting Office was not fair and impartial as he submitted evidence. And, the Claimant did not violate MOWOR 1.10 since all he did was swipe the cell phone to unlock it.

**Findings:**

The Board acknowledges the Organization's displeasure with the introduction and implementation of the DriveCam technology and the contention that the introduction of the technology was not in accordance with Public Law 110-432, the Rail Safety Improvement Act of 2008. The Board will not address these issues believing that any challenge to the Carrier's implementation of federal law must be addressed in a more appropriate forum than a Public Law Board designed to rule on employee claims under an expedited process.

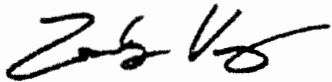
As to the charges against the Claimant, the Board notes that he is familiar with Production Gang policy on cell phone usage and with MOWOR 1.110 Games, Reading and Electronic Devices. The intent of both the policy and MOWOR 1.10 is to prevent employees operating moving equipment of all kinds from being distracted. In evidence are two clear photos taken from the DriveCam video showing the Claimant looking down at the cell phone in his hand. The Claimant admitted having the cell phone in hand when the vehicle was moving, explaining that he simply swiped the phone. While he was not communicating via the phone, what he did qualifies as use inconsistent with the intent of the policy and rule. He may not have been distracted for more than a second and he was moving at a very slow speed, but he was paying less than absolute attention to the road while operating a moving vehicle. Tragic examples abound of what can happen when trains, rail repair equipment and motor vehicles are involved in accidents because operators are distracted. The Claimant committed only a momentary lapse, but one that merited the discipline. The Board finds no reason to overturn the suspension.

**Award:**

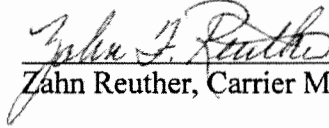
Claim denied.

**Order:**

The Board, after consideration of the dispute identified above, hereby orders that no award favorable to the Claimant be entered.



Zachary Voegel, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas  
August 15, 2017