

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 105
Carrier File No.: 10-21-0094
Organization File No.: C-21-D070-4
Claimant: J. Morgan

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION - IBT)

STATEMENT OF CLAIM:

The Organization alleges that BNSF violated Rule 40 of the Agreement when Claimant was dismissed for his failure to wear his seatbelt while operating a company vehicle on August 21, 2020. He admitted as much at hearing. The Carrier concludes this constitutes substantial evidence of a violation of MWSR 12.5 Safety Belts.

CARRIER POSITION:

The Carrier's DriveCam took video and still photographs of Claimant in a moving vehicle without wearing his seatbelt on August 21, 2020. During the investigation, Claimant admitted his wrongdoing: "I didn't have it on. I realized I didn't have it on. I caught my mistake right away, uh, and I put it on." (TR 14) The Carrier concludes that this evidence is more than adequate to establish a justifiable basis for the discipline taken.

Claimant was hired in 2012. Prior to the incident in question, he received a suspension in 2013, a formal reprimand in 2016, another suspension in 2018 with a 36-month review period. Because he was under a review period for a prior offense at the time of this seatbelt incident, the Carrier deems dismissal an appropriate penalty.

ORGANIZATION POSITION:

The Organization argues the penalty is far too serious given Claimant's forthrightness regarding the facts. It maintains he was given a difficult and frustrating backing task, and because he took responsibility for his lapse, he should not be so severely punished.

DECISION:

The Carrier's photographs of Claimant without a seatbelt with a speed of six miles per hour are persuasive evidence that he was in violation of MWSR 12.5. It is very clear that he was not wearing a seatbelt; he admitted this during the investigation. It is also clear that he was moving at the time, as his speed was shown as six miles per hour by the Drive Cam. This evidence is substantial. Insofar as Claimant was under a review period from a prior offense, the Carrier was within its rights to dismiss Claimant Morgan.

AWARD:

The claim is denied.

ORDER:

The Carrier shall comply with the terms of this Award immediately upon receipt of a fully executed copy thereof.

Dated: February 16, 2023



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



James Rhodes, Carrier Member