

**PUBLIC LAW BOARD NO. 7585**

**Case No. /Award No. 52**  
**Carrier File No.: 10-15-0216**  
**Organization File No.: C-15-D040-16**  
**NMB #106**  
**Claimant: G. S. Waegli**

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**BNSF RAILWAY COMPANY** )  
**(former Burlington Northern Railroad Company)** )  
 )  
**-and-** )  
 )  
**BROTHERHOOD OF MAINTENANCE** )  
**OF WAY EMPLOYEES DIVISION - IBT** )  
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**FACTS:**

Claimant was issued a Level S, 30-day record suspension and one year probation for using his cell phone while driving a Company vehicle on April 7, 2015.

**CARRIER POSITION:**

The Carrier relies on Drive Cam which shows Claimant holding a phone to his ear while his Company vehicle was in motion. It asserts this is a violation of Maintenance of Way Operating Rule 1.10 which states: "While driving a BNSF owned or rented vehicle (of the rail) do not use cellular or mobile telephones, or similar hand-held electronic devices for voice communication in other than hands-free mode."

**ORGANIZATION POSITION:**

The Organization flatly denied that Claimant violated the specified rule. Supervisor Structures Jason Hale testified that Claimant hung up after about five seconds. "There is no audio, and so I do not have that confirmation that he was talking." TR 17, 18. Claimant testified that he stopped the vehicle and made a phone call. Only after he realized the call would not go through did he start driving forward. The phone itself showed that a call was made at approximately 10:33 but lasted zero minutes, zero seconds. The Organization concludes that no voice communication was possible under these facts.

**DECISION:**

This record is not sufficient to establish that Claimant was in violation of the cited rule when he moved the Company vehicle forward. Because the call did not go through, there was no violation. There can be no “use for voice communication” without a telephonic connection being made. The evidence failed to establish any such connection on the date in question.

**AWARD:**

The claim is sustained. The discipline shall be removed from Claimant’s record.

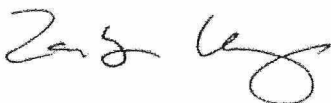
**ORDER:**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is to comply with the award on or before 30 days following the date the award is adopted.


November 29, 2017; Park City, Utah



Patricia T. Bittel, Neutral Member



Zachary Voegel, Organization Member



Zahn Reuther, BNSF Member