

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 57
Carrier File No.: 10-15-0254
Organization File No.: C-15-D040-19
NMB 106
Claimant: C. J. Buckridge

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

FACTS:

Claimant was issued a 30-day record suspension with a three year review period when he was allegedly observed by DriveCam operating a vehicle without a seat belt and while using a cell phone on February 9, 2015.

CARRIER POSITION:

Roadmaster Michael Paz received an alert to investigate a DriveCam incident on February 9, 2015. DriveCam showed Claimant holding a phone to his ear. Paz estimates he traveled 15 to 20 feet "tops." The Carrier maintains he admitted driving without a seatbelt and talking on the phone. It concludes the claim is nothing more than a plea for leniency.

ORGANIZATION POSITION:

The Organization insists Claimant was not driving the truck, but only repositioning it. The vehicle did not exceed 1.9 mph and only went a minimal distance to remove glare from the computer screen while inspecting a passing train. Claimant maintains he traveled no more than five or six feet. In the Organization's view, the discipline is overly harsh. Claimant asserted he did not drive to or from "work activities" as stated in the applicable rule; he concludes he did not violate any rules. He said his intention was just to level the car out, not to drive somewhere.

DECISION:

Maintenance of Way Safety Rule 1.10, states as follows:

1.10 Games, Reading, or Electronic Devices

While driving a BNSF owned or rented vehicle (off rail), do not: * * *

- Use cellular or mobile telephones, or similar hand-held electronic devices for voice communications in other than hands-free mode.

Safety Rule s-12.5 states as follows: “Wear seat belts while operating or riding in equipment or vehicles that are equipped with them.”

These rules are clear and clearly stated. MOWOR 1.10 specifically addresses the issue of driving while using a cell phone and therefore is the best and most obvious source of notification to employees of expectations in this regard. It flatly prohibits cell phone usage while operating a Company vehicle. It does not restrict its application depending on where or how far the vehicle is being driven. It puts the employee on notice that using a cell phone while moving a vehicle is prohibited and likely to result in disciplinary action.

The crux of the case boils down to whether Claimant was “operating” the vehicle when he simply moved it forward a few feet to reduce glare. In order to move the truck, he had to engage the ignition, put the gear into drive, press the gas pedal and steer the forward movement. In the opinion of this Board, these actions constitute fundamental aspects of truck operation, making the rule fully applicable.

Likewise S-12.5 flatly requires employees to wear seat belts while operating vehicles that have them. Claimant was moving his vehicle forward and therefore was operating it. The pictures taken by DriveCam show Claimant was not wearing a seat belt.

The evidence flatly establishes that Claimant moved his truck without wearing a seat belt, and that he was using his cell phone while he did it. It follows that the Carrier has met its burden of proof.

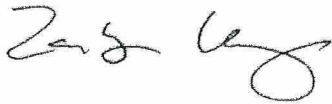
AWARD:

The claim is denied.

November 29, 2017; Park City, Utah

A handwritten signature in black ink, reading "Patricia T. Bittel". The script is cursive and fluid.

Patricia T. Bittel, Neutral Member

A handwritten signature in black ink, reading "Zachary Voegel". The script is cursive and fluid.

Zachary Voegel, Organization Member

A handwritten signature in blue ink, reading "Zahn Reuther". The script is cursive and fluid.

Zahn Reuther, BNSF Member