

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 75
Carrier File No.: 10-17-0239
Organization File No.: C-17-D040-22
Claimant: P.L. Woods

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

STATEMENT OF CLAIM:

The Organization alleges that BNSF violated the Agreement when Claimant was disciplined for violating MWOR 1.10 "Games, Reading, or Electronic Devices" when he used an electronic device while operating company vehicle 28906 while assigned as an Assistant Foreman on TCGX0003 in Silsbee, TX.

CARRIER POSITION:

The rule in question states as follows in pertinent part:

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.
- Manually enter or read text from cellular or mobile telephones, or similar hand-held electronic devices (e.g. e-mailing, performing any electronic text retrieval or entry, accessing a web page, etc.).
- Dial or answer cellular or mobile telephones by pressing more than a single button when operating a commercial motor vehicle.
- Use notebook computers, laptops or similar devices. Display screen of such devices must be closed or off.

The Carrier notes that while operating a Company vehicle, Claimant Woods triggered a window-mounted inward and outward facing camera called DriveCam. In its assessment, the evidence collected from DriveCam revealed that Claimant used a handheld cell phone while operating a Company vehicle.

The Carrier is aware that the Organization has expressed concerns with the timeline of events involving the decision rendered. The Carrier states the discipline letter was sent via email to the General Chairwoman and Claimant's Representative on June 13, 2017, and a copy of the discipline letter, transcript, and exhibits were also sent via USPS Express mail to the Organization's address on file on June 13, 2017 and signed for on June 15, 2017. The employee was also sent the discipline letter, transcript, and exhibits through USPS Express mail on June 13, 2017. On July 5, 2017 General Chairwoman Moody-Gilbert asked via email that a hard copy of the discipline letter, transcript, and exhibits be sent to the Claimant Representative's address; it was sent on July 5, 2017 and signed for on July 7, 2017. The Carrier concludes there was no violation of contractual timelines.

ORGANIZATION POSITION:

The Organization alleges a number of due process violations. In its view, the hearing was unfair and biased because the Carrier failed to introduce the Drive Cam video, and instead only introduced still shots.

In its view, the discipline letter dated June 13, 2017 is out of time limits and the discipline must be removed from the Claimant's record immediately. The Organization sets forth the following timeline: on May 15, 2017 the investigation was conducted; the discipline decision letter was dated June 13, 2017; that letter was not received until June 15, 2017, at address that did not belong to the Claimant's representative at the investigation.

The Organization further contends the Carrier witness improperly conferred with the hearing officer before the hearing and received documents from him. In addition, the Carrier's discipline letter dated June 13, 2017 stated that Claimant was disciplined for alleged violation of MWSR 12.1.1 General Requirements in. However, MWSR 12.1.1 was not referenced or discussed at any point during the investigation.

Claimant explained that he was unfamiliar with the area he was in and accessed the GPS in his cellphone to assist. Claimant definitively asserted that he was stopped when he looked at his phone. Not one of the snapshots in evidence show Claimant looking at his cell phone while the vehicle was in motion. The Organization maintains there is nothing wrong with him holding the phone in his hand and argues the evidence shows nothing more.

DECISION:

When the snapshots were introduced, the Organization did not object to their admission in place of the video. This silence is deemed to constitute waiver of any objection to the form, quality or completeness of the photographic evidence.

Company Witness Winona testified that the video showed Claimant on the main road, though his vehicle was stopped when he was looking at this phone. When he started moving, he was no longer looking at his phone. The snapshots corroborate this testimony: Claimant looks down at his phone, but at each such time, the vehicle is shown as stopped.

The applicable rule prohibits “use,” and goes on to specifically prohibit manually entering or reading text as well as “performing any electronic text retrieval or entry, accessing a web page, etc.” The driver is further prohibited from dialing or answering a cell phone. These restrictions apply to the employee “While driving a BNSF owned or rented vehicle (off rail).”

“Driving” is a term generally understood to refer to guiding the movement of a vehicle.¹ MWOR 1.10 prohibits cell phone functions which would draw attention away from attentive guidance of the moving vehicle. In Claimant’s case, there was no operation of his cell phone while the vehicle was in motion. Because the rule is limited to the situation where a vehicle is being ‘driven,’ employees have not been put on notice that looking at a cell phone while in a stopped vehicle could be deemed a rules violation. Claimant cannot reasonably know he was ‘driving’ his vehicle within the meaning of Rule 1.10 when the vehicle was sitting motionless.

An employee can only be disciplined when he or she has been put on clear notice of what constitutes a rules violation. In this case, “driving” a vehicle is reasonably understood as assuming control of a moving vehicle. Rule 1.10 cannot be so broadly interpreted as to include non-moving vehicles. As a result, the discipline cannot stand. The Board need not reach the other issues raised by the Organization.

AWARD:

The claim is sustained in full. The Carrier shall immediately remove the discipline from Claimant’s record, with seniority, vacation and all other rights unimpaired and make him whole for all time lost as a result of this incident.

¹ See Webster’s Dictionary of the English Language.

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.

May 1, 2019



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



James Rhodes, Carrier Member