

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 83
Carrier File No.: 10-18-0142
Organization File No.: C-18-D040-18
Claimant: H. E. Miller

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

STATEMENT OF CLAIM:

The Organization alleges BNSF violated the Agreement when Claimant was disciplined as a result of a formal investigation held on February 14, 2018, for Claimant's violation of Maintenance of Way Operating Rule 1.10 "Games, Reading, or Electronic Devices" for his use of a hand-held electronic device while operating a BNSF vehicle on December 12, 2017.

CARRIER POSITION:

On June 20, 2017, Claimant's DriveCam activated, showing him looking down and touching the screen of his cell phone while driving a Company vehicle 26 mph on a rough road. The Carrier deems this adequate evidence that he violated Rule 1.10 prohibiting the use of electronic devices while driving. In the Carrier's view, Claimant's assertion -- that he was only looking to see what time it was -- constituted an admission of guilt and no way serves as justification for a clear rule violation.

ORGANIZATION POSITION:

The Organization challenges installation of the DriveCam system as improper and impermissible under the parties' Agreement. It notes the DriveCam system took a video from which the Carrier selected still shots, and deems this an unfair denial of the right of the Organization to a copy of the video itself.

Carrier witness J. Dunn testified that the shots show Claimant looking at his phone and touching it. He admitted they do not establish that a rules violation occurred. The Organization argues that the rule in question does not prohibit an employee from looking at his or her phone and touching it.

DECISION:

There is no provision of the parties' Agreement which was breached when the DriveCam system was installed. Hence, we do not find the DriveCam evidence to be improper. Nor do we find a denial of due process in the Carrier's use of still shots. In selecting still shots in lieu of the entire video, the Carrier has limited its evidence, and must make or break its case on the evidence it has chosen to admit.

Upon careful review of the still shots submitted into the record, we note that all of the shots were taken at 3:51 am Universal time. Claimant put his hands on the phone as if to pick it up, but only touched it in an interactive way once, with his pointer finger at the middle bottom of the phone. This action would be consistent with Claimant's testimony that he only wanted to see what time it was; such an action would take the phone out of sleep mode and allow the time to be displayed.

MOWOR 1.10 states as follows in pertinent part:

- 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. emailing, 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 capable of being closed must be closed. Devices not capable of closing the screen must be turned off.
- Employees must be aware of and comply with any local, state or federal laws governing use of wireless equipment while driving (e.g. laws banning use of wireless phone while driving).

Claimant was prohibited from "reading text." He did not interpret this to prohibit him from reading the digits indicating time of day. "Text" is commonly and reasonably understood as referring to words. MOWOR 1.10 explains the meaning of its prohibition against manually entering or reading text by way of examples that involve reading words or looking at pictures. Claimant's interpretation -- that this did not prohibit him from checking the time -- is reasonable. Glancing at the three to four digits involved in expressing time is not comparable to reading an email, typing or reading a text message or perusing a web page. Further, the rule makes it clear that it is permissible

to press a single button to answer or dial a call. Claimant's single use of his forefinger to press a front button was no more distracting than the permitted action of answering a call. Claimant's actions simply do not rise to the level of inattention addressed in MOWOR 1.10.


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.

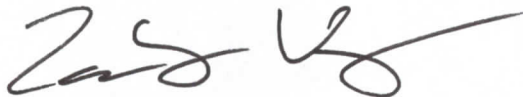
ORDER:

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.

Dated: February 13, 2020



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



Samantha Rogers, Carrier Member