

BEFORE PUBLIC LAW BOARD NO. 7602

CASE NO. 79

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

and

BNSF RAILWAY

BNSF FILE NO. 10-18-0070

BMWE FILE NO. C-18-D040-12

Claimant: C. Armstrong

STATEMENT OF CLAIM

Appealing the decision of Heartland Division General Manager Benjamin Sharpe in his letter dated February 20, 2018, to uphold the discipline assessed to Mr. Casey Armstrong as appealed in letter from Vice General Chairman Randy Anderson dated December 26, 2017, when Mr. Armstrong, hereinafter referred to as Claimant, was assessed a Level S, 30 Day Record Suspension, and a one (1) year review period for alleged violation of Maintenance of Way Operating Rule (MWOR) 1.10 Games, Reading, or Electronic Devices, Carrier File: HLA-MOW-2017-01237.

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7602 has jurisdiction over the parties and the dispute involved herein.

In the instant matter, Claimant received a letter advising him to attend a formal Investigation:

An investigation has been scheduled at 0900 hours, Monday, November 27, 2017 at the BNSF Railway Depot, Conference Room, 201 North 7th Street, Lincoln, NE, 68508, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged misuse of a hand-held electronic device while operating a BNSF vehicle on November 9, 2017 at approximately 1317 hours on the Creston Subdivision, per DriveCam event, while

assigned to Gang BBCX0615. The date BNSF received first knowledge of this alleged violation is November 13, 2017.

An investigation was held on November 27, 2017. Following the investigation, Claimant received a letter advising him:

As a result of investigation held on November 27, 2017 at 0900 hours at BNSF Railway Depot, Conference Room, 201 North 7th Street, Lincoln, NE, 68508 you are hereby assessed a Level S 30 Day Record Suspension for your misuse of a hand-held electronic device while operating a BNSF vehicle on November 9, 2017 at approximately 1317 hours on the Creston Subdivision, per DriveCam event, while assigned to Gang BBCX0615.

In addition, you are being assessed a One (1) Year Review Period that commences on December 18, 2017. Any rules violation during this review period could result in further disciplinary action.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 1.10 Games, Reading, or Electronic Devices.

In assessing discipline, consideration was given to your discipline record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

Enclosed are copies of the investigation transcript and exhibits entered during the investigation. Copies of these documents have been sent to your Representative.

The Carrier argues that MOWOR Rule 1, entitled Games, Reading, or Electronic Devices, is clear in its prohibition from cell phone when driving a vehicle. The in-car camera was triggered by unusual vehicle movement. The series of photographs from the in-car monitor show that Claimant was using his cell phone while operating the vehicle. Further, Claimant admitted to the conduct.

The Organization responds the in-car camera is being used inappropriately for discipline and not for the corrective counseling that it was supposed to allow. Further, an examination of the evidence shows that the in-car camera did not record Claimant using his phone while operating the vehicle.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain

the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

MWOR Rule 1.10 states:

1.10 Games, Reading, or Electronic Devices While on duty, do not:

- Use electronic devices (cellular telephones, notebook computers, laptops, e-books, etc.) for other than business purposes except when located in a predetermined place of safety during break periods and not performing duties.
- Use cellular telephones for voice communications, emailing, performing any electronic text retrieval or entry, or accessing a web page when:

This Board finds that there are no procedural violations which void the discipline. On the merits, the evidence shows that Claimant was operating a co-workers' assigned vehicle to take it to a repair facility. Claimant was using his cell phone to confirm that the GPS voice instructions were still working. While using his phone at the stop light prior to making a turn, the movement of the vehicle triggered the DriveCam. The series of photos show that Claimant was looking down at his cell phone. This Board finds there is substantial evidence in the record that Claimant was operating a Carrier vehicle and using a cell phone. A review of the evidence shows that the DriveCam in-car camera recorded a series of photos before, during, and after the triggering event.

The Carrier did not abuse its discretion in imposing discipline of a 30-Day Record Suspension.

Award:

Claim denied.


Carrier Member


Organization Member


Neutral Member

Dated: July 9, 2019