

BEFORE PUBLIC LAW BOARD NO. 7602

CASE NO. 80

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

and

BNSF RAILWAY

BNSF FILE NO. 10-18-0085

BMWE FILE NO. C-18-Do40-13

Claimant: C. Fredrickson

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STATEMENT OF CLAIM

Appealing the decision of Twin Cities Division General Manager Chad Sundem in his letter dated March 14, 2018, to uphold the discipline assessed to Mr. Corey Fredrickson as appealed in letter from Vice General Chairman Randy Anderson dated February 28, 2018, when Mr. Fredrickson, 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, and MWOR 1.1.2 Alert and Attentive, Carrier File: TWI-MOW-2017-00811.

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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 1000 hours, Tuesday, November 7, 2017 at the Bnsf Depot, Sioux City, IA, 2401 18<sup>th</sup> St., Sioux City, IA, 51105, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged use of electronic device while operating company vehicle 21712 October 30, 2017 at approximately 0731 hours on the Sioux City Subdivision, while

working as a flagman on gang TFLX2262. The date BNSF received first knowledge of this alleged violation is October 31, 2017

Following postponements, a hearing was held. Following the investigation, Claimant received a letter advising him:

As a result of investigation held on Wednesday, January 17, 2018 at 1000 hours at BNSF Depot Sioux City, IA, 2401 18<sup>th</sup> St., Sioux City, IA, 51105 you are hereby assessed a Level S 30 Day Record Suspension for your use of an electronic device while operating company vehicle 21712 on October 30, 2017 at approximately 0731 hours on the Sioux City Subdivision, while working as a flagman on gang TFLX2262.

In addition, you are being assessed a One (1) Year Review Period that commences on February 5, 2018. 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 and MWOR 1.1.2 Alert and Attentive.

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, 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 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.

  
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Carrier Member

  
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Organization Member

  
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Neutral Member

Dated: July 9, 2019