

**BEFORE SPECIAL BOARD OF ADJUSTMENT 986**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DIVISION – IBT RAIL CONFERENCE  
and  
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)  
NORTHEAST CORRIDOR**

**Case No. 323**

**STATEMENT OF CLAIM:** “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s dismissal of Electric Traction Lineman L. Swann for alleged violation of its Standards of Excellence involving Attending to Duties, Teamwork and Safety and for his alleged failure to comply with the Carrier’s Rules Alert No. 2017-02, Use of Portable Electronic Devices (P/I 3.23.2) and Cardinal Rules related to the same when, on the morning of June 26, 2017, during a routine review of drive cam video by ADE Galen Mull, it was discovered that Mr. Swann was identified on camera using an unauthorized electronic device while operating a Carrier vehicle, is harsh, excessive, arbitrary and capricious (System File NEC-BMWE-SD-5525D).
2. As a consequence of the violated referred to in Part 1 above, Claimant L. Swann shall be reinstated to the Carrier’s service with all benefits and seniority rights unimpaired, the record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”

**FINDINGS:**

By notice dated July 5, 2017, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence relating to Attending to Duties, Teamwork and Safety, as well as the Carrier Rules relating to the use of portable electronic devices, in connection with a June 26, 2017, review of drive cam video that led to an identification of the Claimant on camera using an unauthorized electronic device while operating a Carrier vehicle on June 17, 2017. The investigation was conducted, after a postponement, on August 3, 2017. By

letter dated August 9, 2017, the Claimant was notified that he had been found guilty as charged. By letter dated August 15, 2017, the Claimant was notified that he was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence in the record supports the finding of guilt, because there is no merit or mitigating value to the Organization's assertions, because the discipline imposed is commensurate with the seriousness of the proven offense, and because the requested remedy is not appropriate. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to satisfy its burden of proof, because the Carrier assessed discipline without just cause, because it is undisputed that employees are expected to carry and use personal cell phones on the property, because the Claimant used his cell phone here to answer a work-related call from his foreman as required, because the Carrier has not provided a blue tooth or hands-free device in the vehicle that the Claimant was assigned to operate, because the Claimant could not know if the call from his foreman involved an emergency until he answered that call, and because the discipline imposed was harsh, excessive, arbitrary, capricious, and an abuse of the Carrier's discretion.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that

there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier rules that prohibit the use of his cell phone while operating a vehicle on a highway. The record reveals that the Claimant was operating a Carrier vehicle at over fifty-seven miles per hour, and the dashcam clearly shows other vehicles on the highway at the time and the Claimant was utilizing his cell phone while operating the vehicle. The Claimant did not have a hands-free device or Bluetooth with him. He was driving with one hand in clear violation of Carrier rules which state, in part:

Portable electronic devices and railroad-supplied radios must not be used while operating Amtrak – owned or leased vehicles . . .

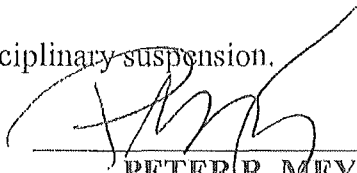
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

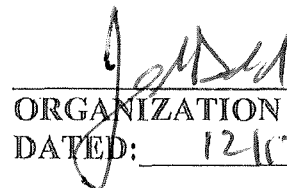
Although the Claimant acted clearly in violation of the rules here, the record reveals that this case has some mitigating elements to it which required the reinstatement of the Claimant. First of all, the Claimant was answering a call from his supervisor which could possibly have been an emergency. Secondly, the Carrier does not provide the employees with any type of Bluetooth device or hands-free device so that they do not have to use their hands when receiving a call from their supervisors. Finally, the record reveals that the Claimant has been working for the Carrier for nearly twenty years. Given all those mitigating circumstances, this Board must find that the Carrier acted unreasonably, arbitrarily, and capriciously when it terminated the Claimant for this


offense. Therefore, we order that the Claimant be reinstated to service but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.

**AWARD:**

The claim is sustained in part and denied in part. The Claimant is reinstated to service but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**ORGANIZATION MEMBER**  
DATED: 12/17/2018

  
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**CARRIER MEMBER**  
DATED: 12/17/18