

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. 324

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

1. The Carrier’s dismissal of Electric Traction Lineman A. Groff 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. Groff 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-5524D).
2. As a consequence of the violated referred to in Part 1 above, Claimant A. Groff 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 1, 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 22, 2017. The investigation was conducted, after a postponement, on August 3, 2017. By

letter dated August 10, 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 when he was using a cell phone without a hands-free device while he was operating a Carrier vehicle. The Claimant was shown on the dashcam video using that cell phone while operating his vehicle. The Claimant did not pull over to utilize his cell phone, and he was not using any type of hands-free device. The Claimant admitted to using his phone while he was operating a Carrier vehicle in violation of the Carrier's rules.

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.

The Claimant in this case had only previously received a reprimand and a ten-day suspension. He worked for the Carrier since January of 2012. Although the Claimant did admittedly violate the Carrier's rules, there were some mitigating circumstances here that require this Board to find that the Carrier acted unreasonably and arbitrarily when it terminated the Claimant's employment 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 shall 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.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 12/17/2018



CARRIER MEMBER

DATED: 12/17/18