

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7357  
AWARD NO. 19, (Case No. 19)**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

**vs**

**CP RAIL SYSTEM/DELAWARE AND HUDSON  
RAILWAY COMPANY, INC.**

William R. Miller, Chairman and Neutral Member  
Kevin D. Evanski, Employee Member  
Anthony Stillittano, Carrier Member

Hearing Date: December 20, 2013

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

**Appeal of discipline on behalf of BMW member Mr. Blair Hammac requests that the discipline of twenty (20) demerits, assessed to Mr. Hammac's personal record be removed and or reversed."  
(Carrier File No. 8-00880)**

**FINDINGS:**

Public Law Board No. 7357, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On July 24, 2012, Claimant was assigned as a System Equipment Operator, Specialist B to operate the Grabber machine and it was alleged during the operation of that equipment Mr. N. Bryant's OTM Reclaimer machine collided with the Claimant's stopped machine and neither employee reported the collision or the damages sustained to both pieces of equipment. The alleged incident took place at approximately 5:00 a.m. on the Canadian Main Line, at the Fort Ann Switch and because of those allegations charges were made against the Claimant.

On August 7, 2012, Claimant was directed to attend a formal Investigation on August 15, 2012, concerning in pertinent part the following charge:

**"The purpose of this Investigation will be to determine your responsibility, if any, for the alleged incident that took place on July 24, 2012 at approximately 05:00 hours on the Canadian Main Line, Fort Ann Switch - Resulting in a machine collision while performing your duties as a System Equipment Operator**

**on DHRAIL, which became known to the Carrier on August 1, 2012."**

On September 4, 2012, Claimant was notified that he had been found guilty as charged and was assessed 20 Demerits for violation of GCOR Rule 1.1.3.

The Board notes that this is a companion case to Award No. 18, Case No. 18, (Claimant Mr. Nathan Bryant) as both cases dealt with the same July 24, 2012, incident.

It is the Organization's position that the Investigation was not "fair and impartial" because the Hearing was not held in a timely manner. The Organization argued that the Carrier had first knowledge of the incident on July 30, 2012, and pursuant to Rule 25.1 the Carrier had an obligation to hold the Hearing within 15 days from the date of the occurrence and because the incident happened on July 24th the latest the Investigation could have been held was August 7, 2012, and it further argued that if you even used the July 30 date the Investigation should have been held no later than August 13th. Additionally, it argued that the Notice of Investigation was not specific making it difficult for the Organization to prepare a proper defense and that it was improper for Manager Delamater to preside over the Hearing because he was subordinate to Superintendent Track Renewal and Work Equipment, S. Mayne, who was the charging officer. Moreover, all of the Carrier witnesses were direct subordinates to the Hearing Officer. Because of all of the aforementioned reasons the Organization requested that the discipline be set aside without reviewing the merits.

Turning to the merits the Organization argued that the Carrier did not meet its burden of proof that the Claimant violated any Carrier Rule. It asserted that at no point in the Notice of Investigation or at the Investigation was the Claimant alleged to have violated a specific Rule and Carrier's failure to enter the alleged Rule violated into the record of the transcript was a fatal error. Lastly, it argued that if the Carrier had proven any violation (which it did not do) the discipline was excessive. It concluded by requesting that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that there were no procedural errors in the handling of the Claimant's Investigation and it was "fair and impartial". Contrary to the Organization's assertion that the Hearing was untimely it argued that the record confirms that the actual date that the Carrier was informed of the collision was on August 6, 2012, the date Mr. Hammac returned from vacation and was questioned by the Carrier and confirmed the incident occurred and that he did not report it to the Carrier, but mistakenly assumed Mr. Bryant had made the report, which means that the Investigation was held within the time limits of Rule 25.1 as it was a conduct matter. It further argued that it is clear by a reading of the transcript that the Claimant and the Organization understood the charges and were well prepared and there is no merit to the argument that the Hearing Officer was biased in his handling of the Investigation.

Regarding the facts of the incident the Carrier asserted that the record is clear that the Claimant's stationary machine was struck by Mr. Bryant's machine and the Claimant failed to report the collision to any Supervisor, Manager or Foreman which was a violation of Safety Rules. Lastly, it argued that the discipline imposed was fair and reasonable and it closed by asking that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the transcript and the record of evidence and finds that the same procedural arguments made in this case were also made in Award No. 18 of this tribunal. For the sake of brevity the Board will not reiterate the reasoning expressed in that Award, but instead affirms that it applies equally in this instance as well. It is determined that the formal Investigation was conducted in a fair and impartial manner and Claimant was afforded all of his "due process" Agreement rights. The dispute will be resolved on its merits.


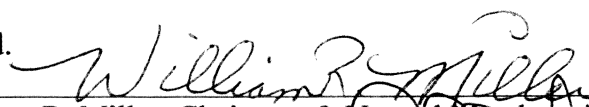
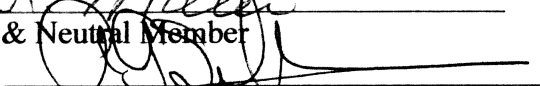
On pages 59 and 64 of the transcript N. Bryant admitted he struck the equipment operated by the Claimant and then failed to report the incident to any Supervisor, Manager or Foreman. In the Claimant's statement of August 6th he acknowledged that Mr. Bryant's machine struck his machine that was motionless. He explained that as he was exiting the machine the collision occurred and it knocked him back into his seat and he further stated that his **"...back was tweaked-out for a couple of days..."** and he assumed that Mr. Bryant advised **"...someone in a supervisory role know that it happened, but apparently he didn't. That is why I am writing this statement at this time."**

Claimant confirmed that Mr. Bryant's machine collided with his machine and he did not report the incident, but instead relied on Mr. Bryant to report the collision. Claimant had the same responsibility as Mr. Bryant to report the accident of July 24th and his failure to do such put him in violation of GCOR Rule 1.1.3, therefore, the record is clear that substantial evidence was adduced at the Hearing that the Claimant was guilty as charged.

The only issue remaining is whether the discipline assessed was appropriate. Claimant's failure to report the incident was a serious matter and the discipline exercised by the Carrier was corrective in nature and in accordance with its disciplinary policy and it will not be rescinded because it was not arbitrary, excessive or capricious. The claim will remain denied.

**AWARD**

Claim denied.

	
Kevin D. Evanski, Employee Member	William R. Miller, Chairman & Neutral Member
Award Date: Feb 13, 2014	
	Anthony Stillitano, Carrier Member