

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7357  
AWARD NO. 15, (Case No. 15)**

**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:**

**On January 17, 2012, Mr. Lukis Smith was dismissed from the services of the Carrier. On January 24, 2012, the Brotherhood of Maintenance of Way filed a claim on behalf of the Claimant for his return to services with all benefits unimpaired and full back-pay."  
(Carrier File No. 8-00842)**

**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.

The record indicates that on January 17, 2012, the Carrier advised the Claimant he had been terminated from all services with the Carrier because of his second DWI conviction.

It is the Organization's position that the Carrier did not prove that The Claimant should have been dismissed. However, if it had proven that discipline was warranted (which it did not do) the discipline exercised by the Carrier was excessive. The Organization argued that the Claimant should have been offered the opportunity to participate in the Employee Assistance Program (EAP) rather than being dismissed. It concluded by requesting that the termination of the Claimant's seniority be rescinded and the claim sustained as presented.

It is the position of the Carrier that it properly terminated the Claimant from its service and the discipline exercised was appropriate for a serious offense and it was not required to offer

the Claimant the opportunity to participate in the EAP. It closed by asking that the discipline not be disturbed and the claim remain denied.

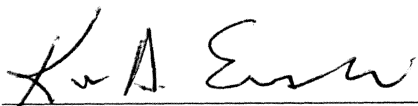
The Board has thoroughly reviewed the record and has determined that the Carrier met its burden of proof that the Claimant was guilty of a serious infraction.

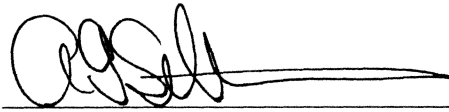
The only issue to be resolved is whether or not the discipline exercised was appropriate. At the time of the incident the Claimant had been employed with the Carrier since April 26, 1999. There is no dispute between the parties that during Claimant's service of almost 13 years he had been a conscientious employee with a commendable work record. Based upon the unique facts of the case and on a non-precedential basis the Board finds and holds that the discipline was excessive. The dismissal is reduced to that of a lengthy suspension which is corrective in nature. The Claimant is to be returned to service with seniority intact and all benefits unimpaired, but with no back-pay after having successfully completed the Employee Assistance Program (EAP).

**AWARD**

Claim partially sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed by the parties.

  
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William R. Miller, Chairman & Neutral Member

  
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Kevin D. Evanski, Employee Member

  
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Anthony Stillittano, Carrier Member

Award Date: Feb 13, 2014