

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7357  
AWARD NO. 22, (Case No. 22)**

**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:**

- 1. The discipline (Dismissal) assessed Mr. T. Delamater by letter dated July 9, 2012 for allegedly failure of a company for cause drug test which was conducted as a result of an incident at Mile Post 86.7 Canadian Main Line was without just and sufficient cause and in violation of the Agreement (Carrier's File 8-00876).**
- 2. As a consequence of the violation referred to in Part 1 above, we request that Mr. Delamater be reinstated with seniority, unimpaired and compensated for all losses, including all wages, benefits, seniority rights and any other losses as suffered due to the Carrier's improper dismissal."**

**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 facts indicate that on May 16, 2012, Claimant was working as a System Equipment Specialist on DH Utility 2 Crew and assigned to operate a Tie Insertor Machine. On May 16th, a job briefing was conducted with all employees of the crew that reviewed the authorized track authority that did not include MP 87. The crew traveled out on the main line without proper "Track warrant" authority to approximately MP 87 and was working on a unprotected track.

The entire crew was removed from service and taken to the Best Western Motel in Ticonderoga, New York, for a FRA -49CFR Part 219 and Carrier's Policy 1807 "For Cause Drug and Alcoholic Test". The Claimant's test results came back positive.

On May 21, 2012, Claimant was directed to attend a formal Investigation on June 1, 2012, which was mutually postponed until June 20, 2012, concerning in pertinent part the following charge:

**"The purpose of this Investigation is for a Failure of a Company, for cause Drug test which was conducted as a result from an incident at MP 86.7 Canadian Main Line."**

On July 9, 2012, Claimant was notified that he had been found guilty as charged and dismissed from service.

The Board notes that this a companion case to Award No. 23, Case No. 23 (Claimant Mr. W. Kanton, Jr.) as both cases arise from the same May 16, 2012, incident.

It is the Organization's position that the Investigation was not "fair and impartial" because the Notice of Investigation did not cite any specific Rules that were allegedly violated which made it impossible for the Organization to prepare an adequate defense. Based upon that procedural error the Organization asked that the discipline be set aside without reviewing the merits.

Turning to the merits the Organization argued that the Carrier had no probable cause to test Claimant and the Carrier's determination to administer the test was unreasonable, unfair and not in compliance with its own Policy. Additionally, it argued that if the Carrier had proven a 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.

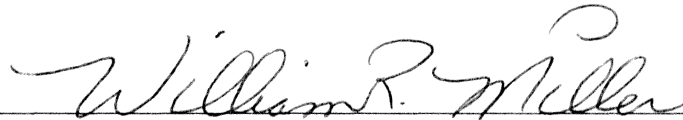
It is the position of the Carrier that the Claimant received a "fair and impartial" Hearing. The Carrier further asserted that the transcript shows that on May 16, 2012, Claimant was working under the influence of drugs which was proven by a positive drug test. It argued that on Page 16 of the Transcript the Claimant confirmed that he had relapsed over the weekend and smoked some marijuana which was in his system when he was tested. The Carrier pointed out that it offers programs to assist employees with addiction problems, but the Claimant only considered help after he had been caught in violation of its Drug Policy when he tested positive for substance abuse. It further argued that the Employee Assistance Program (EAP) is not a safe haven for employees that have been caught in violation of its Rules. It reasoned that the Claimant chose not to obey the Rules and Policy and he is accountable for his actions and the

discipline exercised was appropriate. It closed by asking that the discipline not be disturbed and the claim remain denied.

The Board has been advised that sometime after the parties presentation of this case before the Neutral Member of the Board the Carrier offered the Claimant a Waiver Agreement with reinstatement to service. The Claimant accepted that leniency offer to return to service and as part of that settlement the instant claim became "moot". The Board finds and holds that because of the claim settlement the dispute is dismissed.

**AWARD**

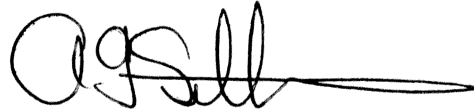
Claim dismissed.



William R. Miller, Chairman & Neutral Member



Kevin D. Evanski, Employee Member



Anthony Stillittano, Carrier Member

Award Date: MARCH 13, 2014