

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 37
Case No. 37

-and-

Delaware and Hudson Railroad d/b/a Canadian Pacific Railway

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

1. The discipline [thirty (30) day suspension] assessed Mr. B. Brown by letter dated July 8, 2013 in connection with an incident, whereby Amtrak Train 69 contacted an obstruction on the track at CPC 35 Canadian Sub on Wednesday, June 12, 2013 was without just and sufficient cause and in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, we request that reference to this discipline be removed from Claimant B. Brown's record and he be compensated for all losses suffered due to the Carrier's improper discipline.

FINDINGS:

This Public Law Board No. 7357 finds that the parties are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated July 8, 2013 the Carrier notified the Claimant, Mr. Brett Brown that he was assessed a thirty (30) day unpaid suspension as follows:

Dear Sir:

As a result of the facts developed at the formal investigation hearing, Tuesday, June 18th, 2013 you have been found to be in Violation of GCOR Rules 1.1, 1.1.1, 1.6, 1 & 2, 15.2A, for the incident, whereby Amtrak Train 69 contacted an obstruction on the track at CPC 35 Canadian Sub, on Wednesday, June 12, 2013.

You are hereby given 30 (thirty) day unpaid suspension per Policy 5612 from Canadian Pacific Railway. Effective on the date of receiving this notice.

S/Todd Dragland – Division Engineer – Northeast US Division

The Organization appealed the discipline, and the matter has been progressed to this Board for adjudication.

We have considered the procedural contention of the Organization and we find no basis exists to set aside the discipline on these assertions of the Organization.

On June 12, 2013, the Claimant was the employee-in-charge of providing Form B on-track protection for four work groups, including CP Rail employees and 18 contractor employees. The project limits of work was a little over two miles from CPC 33 to CPC 35. The Form B in effect had slightly longer limits from 32.6 to 36.2 or some 3.5 miles, inclusive of red flag protection beyond the project work limits. Amtrak Train 69 contacted Mr. Brown requesting permission to enter and pass the Form B limits. A temporary construction crossing existed for a contractor, JMG Construction at CPC 35 where salvage tires are used, placed on the rails so that as dozer tracks cross over the rail, it's not metal on metal. Mr. Brown was physically in the area at CPC 35.2. Amtrak was getting close. He was approximately one thousand feet north of the JMG employees at CPC 35 and could visually see their men and equipment were in the clear, and he telephoned their boss Ryan and let him know, stay clear Amtrak was coming, and Ryan responded that they were in the clear. He proceeded up to mile post 36 where he had another contractor working on the west side of the yard and let him know that a train was coming through, to stay in the clear, as the contractor was in the clear anyway. He then proceeded down to CPC 33 by road where he had a signal gang, track builders and more crew from JMG Construction, cleared them and gave Amtrak 69 the okay to proceed past the red board and Form B limits.

Mr. Brown testified that as he was headed back to his truck when Amtrak 69 called over the radio and stated that they had struck a tire at CPC 35.

A DVR video snapshot (exhibit 7) derived from Amtrak Train 69 camera equipment shows one tire on the west rail in the crossing on the main line as the train approached. Mr. Brown phoned contractor Ryan to tell him that Amtrak struck a tire at CPC 35 and Ryan stated that there was no possible way and that all the tires had been stacked; and that the contractor had touched nothing to change the scene of the incident. This assertion was in fact proven to be untrue. And, the record established that the contractor suspended the employee responsible to clear tires from the track for 5 (five) days. Mr. Brown testified in part:

Q. -- that you had cleared them up by phone when you were --

A. Yes, I did clear them up, but I was physically in the area where I could physically see them and all. Did I talk to the face to face? No.

Q. So would it be -- I guess I'm just curious as to why, if you were in the area, you would call them on the phone rather than --

A. I was trying to get 25 guys in the clear before I called Amtrak. I mean, I was doing it as safe as possible. I've had no issues with them. It was a trust thing. Obviously, I can't trust them. Now it's obvious, because they stated to me that there was no tires and that they were all stacked there before Amtrak came. If you look at that picture again, none of those tires are stacked. They tried covering up in between, no less. ... (Tr. 37, 38)

We find that substantial evidence of record supports the Carrier's determination that Mr. Brown was in violation of GCOR Rules 1.1 Safety, 1.1.1 Maintain a Safe course, 1.6, 1.2 conduct and 15.2 Protection by Track Bulletin Form B, regarding Amtrak Train 69 and its contact with an obstruction on the track at CPC 35 Canadian Subdivision due to his actions in proximity to the contractor working at CPC 35. We also find that while Mr. Carr had had the opportunity to have conversations with Craig Layman, who was at this work site normally

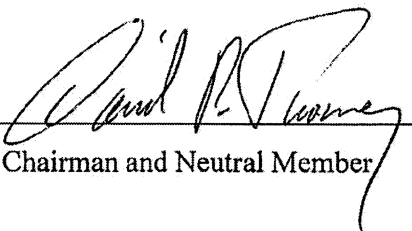
providing work protection, and had provided him advice on how best to handle multiple locations, Mr. Carr did not have any previous conversations with Brett Brown in this regard (Tr. 25). And, Mr. Brown testified in response to a question about phoning the contractor located at CPC 35 to verify that they were clear at that location when he was near the location at CPC 35.2 that "they've been doing it for a year like that". (Tr. 38).


Mr. Brown's discipline record stood at 20 demerits converted to a (5) day suspension under the new U.S. Discipline Policy 5612. Considering all the specific circumstances of this case, as set forth above and the corrective purpose of the Carrier's discipline policy, the appropriate discipline for the second infraction under Policy 5612 should have been 10 working days unpaid suspension. Mr. Brown's record shall be adjusted accordingly, and he shall be paid for time lost beyond a 10-day suspension.

AWARD

As per Findings

ORDER: The Carrier is required to comply with this award within thirty days.


Chairman and Neutral Member


Carrier Member


Organization Member

Dated: 12/28/2016