

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 40
Case No. 40

-and-

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

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

1. The discipline (dismissal) assessed Mr. H. Hardy, III, by letter dated November 11, 2013, in connection with allegations that he failed to supply the Carrier's Health Services Department with requested information 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 Claimant H. Hardy, III be reinstated with seniority unimpaired and compensated for all losses as suffered due to the Carrier's improper dismissal.

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 November 11, 2013, the Carrier notified the Claimant, Mr. Howard Hardy, III, that he was dismissed from employment as follows:

Dear Sir:

As a result of the facts developed at the formal investigation hearing, held on Thursday, October 24th, 2013 to determine your violation to supply our Health Services Department with a requested medical update.

Effective immediately you are hereby Dismissed from Canadian Pacific Railway.

S/Todd Dragland – Division Engineer – NEUS

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

On August 29, 2013, Claimant Howard Hardy laid off from work on account of medical issues. By form dated that same day an Emergency Department doctor advised the Claimant of the activity restriction "Do not work today". Mr. Hardy attempted to report for work on September 9, 2013, but was advised by his supervisor that he had to be cleared to return to work by the Company's Health Services Department in accordance with Company Policy 1820.

Those reasons included:

1. Being absent for more than seven (7) days, or,
2. An injury due to a car accident

On September 9, 2013 Mr. Hardy phoned the Health Services Department and left a message to be called back and left his telephone number. A member of the Health Services Department returned his call but he did not answer the phone. A voicemail was left for him to return the call to Health Services. On September 10, 2013, Health Services sent Mr. Hardy a letter advising him what was required in order to be cleared to return to work. That letter indicated that the information was required on or before September 17, 2013. Mr. Hardy did not supply the required information nor did he contact Health Services or his supervisor.

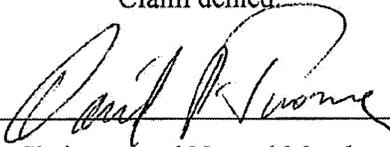
On September 18, 2013, after not receiving the required information, a second letter was sent to Mr. Hardy advising that they did not receive the information requested. That letter again requested information that would allow him to be medically cleared to return to service. Mr. Hardy was given until September 25, 2013 to supply the required information. However, he did not supply the required information, nor did he contact Health Services or his supervisor.

On September 28, 2013, a third letter was sent to Mr. Hardy by his supervisor stating that the requested information must be provided within ten (10) days and that failure to provide the information could result in a formal investigation and possible disciplinary action. By letter dated October 15, 2013 Mr. Hardy was sent a notice to appear at a formal investigation to determine his responsibility, if any, for his alleged violation of failure to supply the Health Services Department with a requested medical update. On October 24, 2013 the scheduled investigation was recessed while his representative searched the premises for Mr. Hardy, without success. The investigation was then held as scheduled in Mr. Hardy's absence.

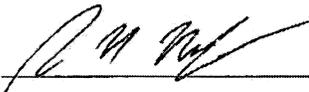
We find that substantial evidence of record, including the testimony of Jennifer Nelson, an RN at Heath Services established that Mr. Hardy did not provide Health Services with the requested medical update as directed by the Carrier. At the time of the investigation, the Claimant had not contacted the Carrier for over a month and a half. No rational basis existed for the Carrier to postpone the investigation. Mr. Hardy had a 10 day and 30 day suspension within the previous year. The discipline assessed was neither arbitrary, capricious, nor excessive. We must deny this claim.

AWARD

Claim denied


Chairman and Neutral Member


Carrier Member


Organization Member

Dated: 12/28/2016