

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 41
Case No. 41

-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 of (5) five days unpaid suspension assessed Mr. Donald Lisenby by letter dated September 6, 2013, in connection with allegations that he did not promptly report an injury to his supervisor was in violation of the Agreement.
2. As a consequence of the Agreement violation referred to in Part (1) above, we request that the discipline be removed from the Claimant's record and that 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 September 6, 2013, the Carrier notified the Claimant, Trackman/Truck Driver Donald Lisenby, that he was assessed the discipline of five (5) days actual suspension as follows:

Dear Sir:

As a result of the facts developed at the formal investigation hearing, held on August 20th, 2013 you have been found to be in Violation of GCOR Rule 1.1.3 and 1.2.5. In addition in violation of GCOR 1.6 of the General Code of Operating Rules Sixth addition.

You are hereby given 5 (five) days Unpaid Suspension Beginning on September 9th, 2013 per Policy 5612 from Canadian Pacific Railway.

S/Daniel Swartz – Director of Track Renewal US East

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

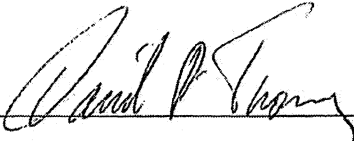
On August 13, 2013 when the Claimant found out that his documentation to drive a company truck was not up to date and that he would have to go to work as a laborer in the interim, he informed the Carrier that he could not work that day as a trackman because he had been injured on the job on July 29th, coming down the ladder off of his company truck, when he slipped and grabbed the ladder with his right arm to hold on, and when he did he must have pulled something. Mr. Lisenby testified that he had planned to have the injury checked out on August 16, at a personal physical examination appointment that had been previously scheduled. Under Carrier Policy 5612 – U.S. Discipline Policy states that “Failure to promptly and properly report an accident or injury” is within the category of conduct warranting immediate withholding of the employee from service pending the outcome of the hearing.

We find that Mr. Lisenby was properly withheld from service under the facts of record in this case. And we find that substantial evidence of record, including the testimony of John Harvey and Mr. Lisenby himself, supports the Carrier’s determination that Mr. Lisenby failed to promptly report an injury to his supervisor in violation of GCOR Rules 1.1.3, 1.2.5 and 1.6.

The contention that Mr. Lisenby was disciplined for reporting an injury in violation of OSHA Section 20109, subsection C2 is without merit. He was disciplined for failing to report an injury under well known company rules. We must deny this claim.

AWARD

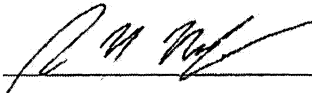
Claim denied.



Chairman and Neutral Member



Carrier Member



Organization Member

Dated: 12/28/2016