

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 42
Case No. 42

-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 ten (10) day debited unpaid suspension assessed Mr. Donald Lisenby in connection with allegations of absenteeism on October 7th, 8th, 9th and 10th, 2013 was in violation of the Agreement.
2. As a consequence of the Agreement violation, the Organization requests that the debited ten (10) day suspension step in the Carrier's discipline policy be removed from the Claimant's record.

FINDINGS:

This Public Law Board 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 14, 2013 the Carrier notified the Claimant, Mr. Donald Lisenby, that he was assessed a debited 10 (ten) day unpaid suspension as follows:

Dear Sir:

As a result of the facts developed at the formal investigation hearing, held on November 4th, 2013 you have been found to be in Violation of GCOR 1.15 involving absenteeism on October 7th, 8th, 9th and 10th, 2013.

You are to Debited a 10 (ten) day Unpaid Suspension.

Beginning on the date of November 25th, 2013

S/Brad Delamater – Assistant Director of Track Renewal NEUS

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

The Claimant, Donald Lisenby, testified that for the period of time in October 2013 he was working as a trackman truck driver for the Carrier. For the four ten hour day work week of Monday, October 7 through Thursday, October 10, 2013 his truck was out of service. He testified in part as follows:

Q. What did you say about your truck?

A. The truck was broke down, so I was actually helping the guys on the track.

Q. So, what would your primary duties be when your truck is broken down?

A. I usually get another truck. But this was broken down for an entire month, so I got stuck working with the guys on the line. (Tr. 13)

Manager of Track Renewal John Harvey testified that Mr. Lisenby called him on Sunday evening, October 6th and said he would be off sick on the 7th and on the 7th Mr. Lisenby called Mr. Harvey and said he would not be in on 8th, that he was still sick. On Tuesday evening, October 8, Mr. Lisenby called Mr. Harvey to tell him he would not be in on Wednesday the 9th because he was having car problems. And, then on Wednesday, October 9th

he called Mr. Harvey to say he was still having car problems and he would not be into to work on Thursday the 10th of October which ended his work week without performing any service.

Under the GCOR Rule 1.15 employees must report for duty at the designated time and place with the necessary equipment to perform their duties. And the rule further states that continued failure to protect one's assignment will be cause for dismissal. From the record before this Board, we find that the Carrier did not meet its burden of proof that Mr. Lisenby was in violation of Rule 1.15 regarding his failure to protect his assignment on Monday and Tuesday October 7 and 8, 2013. The sickness claims on these two days are un rebutted and not grounds for rules violation.

Mr. Linsenby was aware that he had a car problem by the evening of Tuesday, October 8. His failure to arrange transportation to get to work on Wednesday, October 9 and Thursday, October 10 was contrary to his obligations under GCOR Rule 1.15 and a proper basis for discipline for failure to protect his two ten hour work days in question. Under the Carrier's Discipline Policy 5612, the Carrier will assess only record suspensions for attendance related cases. Under the Carrier's progressive discipline policy, the rule violation for absenteeism for October 9 and 10 was a second infraction calling for a "10 day working day unpaid suspension". And, since it was an attendance related case, no actual suspension occurred. We require that the Carrier expunge reference to absenteeism on October 7th and 8th from the Claimant's personal record. Since the record supports the finding of responsibility for absenteeism on October 9th

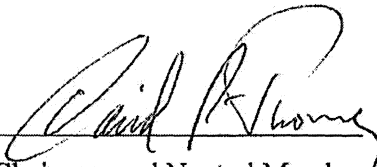
and 10, 2013 and such is a second infraction on the Claimant's record under the Carrier's

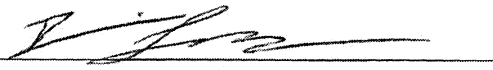
Discipline Policy carrying a 10 working days unpaid suspension, which is of record not actual,
his record shall so stand.

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