

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 43
Case No. 43

-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 a 30 day suspension assessed Mr. Donald Lisenby by letter dated January 28, 2014 in connection with the alleged violation involving Time Reporting on December 19th, 2013 was without just or sufficient cause and in violation of the Agreement.
2. As a consequence of the Agreement violation the Organization requests that the 30 day suspension be removed from the Claimant's record and that he be compensated for all losses suffered with 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 January 28, 2014, the Carrier notified the Claimant, Mr. Donald Lisenby, that he was assessed a 30 day actual suspension as follows:

Dear Mr. Lisenby:

As a result of the facts developed at the formal investigation hearing, held on Friday, January 10th, 2014 you have been found to be in Violation of GCOR Rule 1.6, (conduct) you are Suspended for 30 Days beginning February 3rd thru March 14th, 2014.

S/Brad Delamater – Assistant Director Track Renewal

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

No basis exists in the record before this board to set aside the discipline on procedural grounds. Mr. Lisenby was given a proper charge in the Form 104 Hearing Notice. The fact that the Hearing Officer read GCOR Rule 1.6 into the record and asked the Claimant if he understood the rule which has been read is not a basis to set aside the discipline. John Harvey, the Claimant's supervisor as Manager, Track Renewal was asked by the Hearing Officer:

Q. When did you notice the time that was entered for ten hours?

A. The following week I reviewed the time, and I asked Payroll to send me a copy of his time sheet, which I have with me if you like it.

HEARING OFFICER: All right. Put this in as Carrier Exhibit 2. (Carrier exhibit Number 2 was received in evidence.)

HEARING OFFICER: This time sheet dated 12/19/13 and will be entered as Carrier Exhibit Number 2. (Tr. 1)

There was no objection made to entering this document at the hearing. Moreover the record clearly established that Mr. Lisenby requested and received permission from his supervisors, Mr. Harvey and Mr. Vanderpool, to leave work early from his assigned 10 hour shift. Mr. Harvey testified in part:

... So he went and parked the truck and left. Then upon review of time the next week -- I review everybody's, all the employees' time, and he paid himself for the full ten hours.

Q. How many hours early did he leave?

A. Three hours early. (Tr. 9)

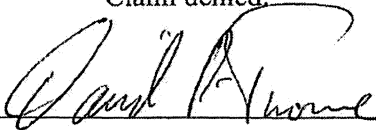
The Claimant himself admitted that he left early and that he put in for 10 hours pay on the date in question. He states "I just forgot about it, I simply made a mistake". (Tr. 24)

We find that substantial evidence of record supports the Carrier's determination that Mr. Lisenby was responsible for violation of GCOR Rule 1.6 (conduct) on December 19, 2013 when he paid himself for the full ten hours scheduled for the day after obtaining permission from two supervisors to leave early on the date in question.

The discipline of a 30 working days unpaid suspension was in conformity with the Carrier's Policy 5612, U.S. Discipline Policy for a third infraction.

AWARD

Claim denied.


Chairman and Neutral Member



Carrier Member



Organization Member

Dated: 12/28/2016