

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 44
Case No. 44

-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. D. Lisenby, by letter dated August 13, 2014, in connection with allegedly running through a switch that occurred on July 30, 2014 was without just and sufficient cause an in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant D. Lisenby be reinstated with seniority unimpaired and compensated for all losses 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 August 13, 2014, the Carrier notified the Claimant, Mr. Donald Lisenby, that he was dismissed from all service with the Canadian Pacific Railway as follows:

Dear Sir:

As a result of the facts developed at the formal investigation hearing, held on Wednesday, August 6th, 2014 you have been found to be in violation of GCOR Rule 1.1.1, 1.1.2, & 8.3, On Track Safety 23.3.3 & 23.4 and Engineering Safety Rule Book E-27.

Effective immediately you are hereby dismissed from Canadian Pacific.

S/Andre Lefluer
Director Track Renewal Canada East

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

The Claimant was properly notified of the charge against him in the Carrier's July 30, 2014 notice to attend a Formal Investigation:

The purpose of this investigation will be to determine your responsibility, if any, for your alleged violation involving a Run Thru switch at CPC 163.

A run through switch is when it is traveled through in the wrong direction and the switch is not properly lined for the route. It was Mr. Lisenby's responsibility to make sure that the switch was lined for the route of travel. And he failed to do so. His admitted culpability is set forth in part as follows:

After it was done, I went in and I grabbed the planks, sat and waited for Foreman Martin to come up and I let him know what I was doing. He said to continue and that's when I went up to South Junction Road and I pulled up to set on. There's a ditch on the controlled siding part so I couldn't get on that. I couldn't get my truck on that. It's hard to get my truck – it's big and to try to get on that was tough. So, I ended up getting on to the main and people were backing up on both sides waiting for me to get on.

I finally got the truck on and I continued to back backwards but the gates were still down, everybody was still waiting. So I was continuing backwards so the gates would come up so everybody could continue on their morning route and that's when I felt the truck bounce a little bit, threw the switch.

I looked and I noticed something was wrong with the switch and I called [Jeremy Vanderpool, Manager Track Renewal] to tell him that something was wrong with it. He said – that's when he asked me did you get on the main. So, that's when I told him I messed up and that's when I went through and that happened. He said he's got to make some calls to find out and see what's going on. And yes, I did ask him am I going to get in trouble for this. (Tr. 43, 44)

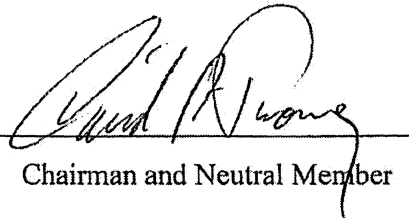
The record clearly established Mr. Lisenby's responsibility for the run through switch at CPC 163 in violation of Carrier rules. No basis exists to set aside the discipline on the procedural contentions raised by the Organization in this case. The serious infraction in this case

was the fourth infraction committed by the Claimant under the Carrier's discipline policy 5612.


The discipline assessed was neither arbitrary, capricious nor excessive. We must deny this claim.

AWARD

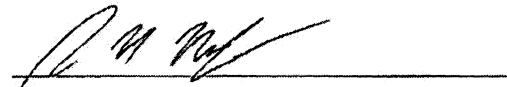
Claim Denied.



Chairman and Neutral Member



Carrier Member



Organization Member

Dated: 12/28/2016