

**PUBLIC LAW BOARD NO. 7357**

**PARTIES TO THE DISPUTE:**

Brotherhood of Maintenance of Way Employees  
Division – IBT Rail Conference

Award No. 46  
Case No. 46

-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 Carrier was in violation of the Agreement of the parties when it imposed discipline in the form of a recorded five (5) day suspension (*actually 9 day unpaid suspension*) in addition to time already served (*employee was pulled from service pending investigation July 28-31, 2014*) due to an incident that occurred at MP 146.8 on the Canadian Subdivision on Monday, July 28, 2014 whereby the hi-rail truck he was operating came in contact with another hi-rail truck on the track.

(2) The claimant shall be made whole for all time lost as a result of the improper suspension from service and his record cleared of their 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 August 7, 2014 the Carrier notified the Claimant, Mr. Shaun Tripi, that he had been assessed a 5 day suspension to be served, as follows:

Dear Sir:

As a result of the facts developed at the formal investigation hearing, held Thursday July 31<sup>st</sup>, 2014 you have been found failing to comply with On-Track Equipment Safety Procedures, in violation of On Track Safety Manual Section 23.4 Stopping Distance and Maintaining Safe Braking Distance – failure to operate on-track equipment at a speed that will allow the operator to stop within one-half the range of vision, and failure to take the necessary precautions and adjust speed of on-track equipment when conditions exist that make rails slippery.

Your record has been assessed with a 5 day suspension, to be served. This suspension will begin on August 18<sup>th</sup> to August 22<sup>nd</sup>, 2014 with an expected return to work the date of August 25<sup>th</sup>, 2014.

S/Todd Dragland – Division Engineer – Northeast US Division

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

No basis exists to set aside the discipline in this case on the procedural grounds or contractual assertions of the Organization in this case.

Substantial evidence of record, including the Claimant's forthright testimony at the investigation, supports the Carrier determination that Mr. Tripi, while operating a hi-rail truck on the main track, came in contact with another on-track vehicle at MP 146.8 on the Canadian Subdivision on July 29, 2014 during a heavy down pour, Mr. Tripi testified as follows:

Q. And given the condition of that day do you think that your stopping distances might have been increased?

A. Yeah.

Q. So, as you said before, it was about two hundred feet you could see. Per the rule, how far ahead of time should you be able to stop?

A. Two hundred feet, stop half the distance; so, a hundred feet.

Q. And given the condition of that day, do you feel your speed would have permitted you to stop that far ahead?

A. Yes.

Q. But in the end it didn't?

A. No.

Q. Okay. So, what do you think you could have done differently, I guess?

A. I guess I could have started braking before that curve.

Q. So, in the end, approach the whole thing a lot slower?

A. Yes.

Q. And you knew where the other truck was?

A. Yes.

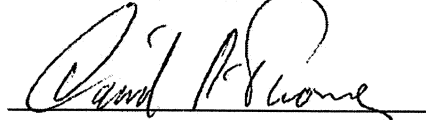
Q. All right. Mr. Tripi, on the Canadian sub on July 28, 2014, at approximately 07:00 hours, as identified in the notice of the investigation, did you comply with Rule 23.4, braking distances?

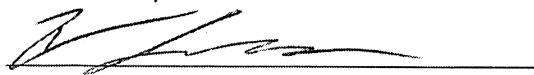
A. Nope. (Tr. 22, 23)

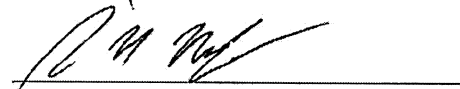
Mr. Tripi was properly relieved from service pending the formal investigation. The discipline assessed of a 5 day actual suspension is neither arbitrary, capricious nor excessive. We must deny this claim.

Award

Claim denied.

  
Chairman and Neutral Member

  
Carrier Member

  
Organization Member

Dated: 12/28/2016