

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 48
Case No. 48

-and-

Delaware and Hudson Railroad Company d/b/a Canadian Pacific Railway

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood that:

1. The discipline (dismissal) assessed Mr. W. Wade, Jr. by letter dated September 26, 2014 for allegedly failing to operate a vehicle in a controlled and careful manner and allegedly failing to conduct a walk around prior to operating a vehicle in connection with a motor vehicle accident on September 9, 2014 was arbitrary, capricious and without just and sufficient cause and in violation of the Agreement (Carrier's File 8-01002 DHR).
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant W. Wade, Jr. be returned to service immediately, that his record be cleared of this discipline and that he be compensated 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 26, 2014, the Claimant, Mr. William Wade, Jr. was notified by the Carrier that he was assessed the discipline of *dismissed* from service with the Carrier as follows:

Dear Sir:

As a result of the facts developed at the formal investigation hearing, held Tuesday, September 16th, 2014 you have been found failing to comply with Engineering Safety Rules, in violation of Engineering Safety Rule E-2 – failing to operate a vehicle in a controlled and careful manner to prevent collisions with other objects and failing to conduct a walk around prior to operating a vehicle to identify obstacles that interfered with executing a safe movement. This is a result of your operation of a BTMF truck that resulted in a motor vehicle accident on the Canadian Subdivision on September 9, 2014.

You are hereby Dismissed from service with Canadian Pacific Railway, effective immediately.

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 in the record before this Board to set aside the discipline on procedural grounds.

Substantial evidence of record, including the Claimant's admission of responsibility in this case supports the Carrier's determination that Mr. Wade failed to operate his vehicle in a controlled and careful manner to prevent collisions with other objects and failed to conduct a walk around prior to operating his vehicle to identify obstacles that interfered with executing a safe move in violation of Engineering Safety Rule E-2. The Claimant's back up move in question, in violation of ES Rule E-2, resulted in property damage to an AEI Reader valued at approximately \$900, there was no damage to the truck.

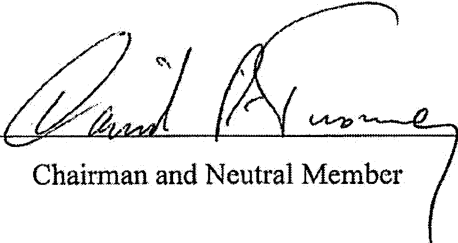
Under the Carrier's Discipline Policy 5612 infractions will be dealt with using progressive discipline, unless they warrant outright dismissal. The Carrier's assertion that the violation in this case was a "willful indifference to the safety of themselves, others or the public" warranting immediate dismissal is devoid of merit. The September 9, 2014 infraction was a


second infraction for Mr. Wade under the Carrier's Progressive Discipline Policy and should have been assessed as a 10 working day unpaid suspension. Mr. Wade shall be returned to service with all rights unimpaired and with back pay for time lost, other than for the 10 working day suspension less outside earnings.

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