

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 49
Case No. 49

-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. B. Brown by letter dated September 26, 2014 for allegedly failing to advise and redirect to safe work practices anyone observed performing an unsafe act in connection with Mr. Brown's involvement in a motor vehicle accident on September 9, 2014 was arbitrary, capricious and without just and sufficient cause and in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant B. Brown 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. Brett Brown was notified by the Carrier that he was assessed the discipline of Dismissed from service with the Canadian Pacific Railway 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 Core Safety Rule 1 – failing to advise and redirect to safe work practices anyone observed performing an unsafe act. This is a result of your involvement 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

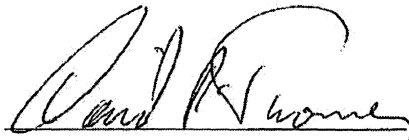

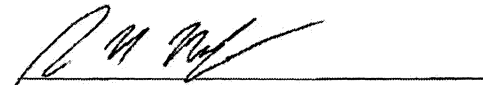
The Organization appealed the discipline, and the matter has been progressed to this Board for adjudication.

No basis exists in the record before this Board to set aside the discipline on procedural grounds.

Substantial evidence of record supports the Carrier's determination that Mr. Brown was in violation of Engineering Safety Rule 1 – failing to advise and redirect to safe work practices anyone observed performing an unsafe act. The formal investigation had valuable teaching effects on the individuals charged in this case. The backup move by the operator, which resulted in property damage to an AEI Reader valued at approximately \$900 without damage to the truck itself should have been stopped by the Claimant, who had reentered the truck and was writing down information for his Form B for the next day. Mr. Brown's infraction in this case was not a dismissal offense. It was a third infraction under Policy 5612 requiring a 30 working day suspension. Accordingly, the dismissal in this case is reduced to a 30 day actual suspension. Mr. Brown's discipline record shall reflect this change and he shall be made whole for all time he lost beyond the 30 day period 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: 12/28/2014