

**PUBLIC LAW BOARD NO. 7357**

**PARTIES TO THE DISPUTE:**

Brotherhood of Maintenance of Way Employees  
Division – IBT Rail Conference

Award No. 51  
Case No. 51  
Carrier's File 8-00983 DHR

-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 [five (5) day actual suspension] assessed to Mr. M. Thompson by letter dated April 17, 2014 for alleged violation of Track Inspection Requirements, CP Red Book Sections 4.1.1 and 4.1.2 and FRA 213.53 – failure to identify wide gauge was arbitrary, capricious and without just or sufficient cause and constituted a violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, we request that the discipline decision be reversed and Claimant M. Thompson be made whole, including all straight time and overtime hours lost or denied as a result of the discipline.

**FINDINGS:**

This Public Law Board 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 April 17, 2014, the Claimant, Mr. Michael Thompson was notified by the Carrier that he was assessed a 5-day suspension, to be served as follows:

Dear Sir:

As a result of the facts developed at the formal investigation hearing, Monday, March 31<sup>st</sup>, 2014 you have been found failing to comply with Track Inspection Requirements, in violation of CP Red Book Section 4.1.1 & 4.1.2 and FRA 213.53 – failure to identify wide gauge.

Your record has been assessed with a 5-day suspension to be served. This suspension will begin on April 28<sup>th</sup> to May 2<sup>nd</sup>, 2014 with an expected return to work the date of May 5<sup>th</sup>, 2014.

s/Todd Dragland – Division Engineer – NEUS

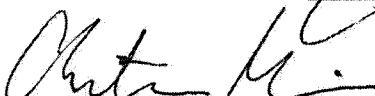
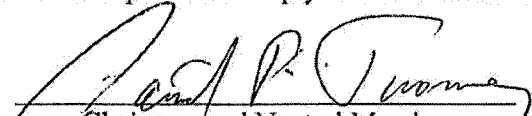

The Organization appealed the discipline, and the matter has been progressed to this Board for adjudication.

No basis exists to set aside the discipline in this case on procedural grounds.

The Carrier has the burden of proof in this matter of discipline. After study of the entire record we are compelled to conclude that the Carrier has not established that Mr. Thompson failed to comply with Track Inspection Requirements, in violation of CP Red Book Section 4.1.1 & 4.1.2 and FRA 213.53 – failure to identify wide gauge. The Carrier has not provided substantial evidence of record to support the assertion that Mr. Thompson failed to take accurate measurements during inspection of Track 10 on February 21, 2014, resulting in his failure to identify the out of service deficit of a wide gauge, in violation of the rules as referenced above. To the contrary Mr. Thompson testified that he properly inspected the track. And, heavy train traffic moved across Track 10, a main track in the Kenwood Yard between the date the track was inspected by Mr. Thompson and when the FRA inspection occurred on February 17, 2014. He shall be made whole of all time lost and the discipline expunged from his record.

AWARD  
Claim Sustained.

ORDER: The Carrier is required to comply with this award within thirty days.

		
_____ Carrier Member	_____ Chairman and Neutral Member	_____ Organization Member

Dated: 12/7/17