

PUBLIC LAW BOARD 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 52
Case No. 52
Carrier's File 8-01028 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 (termination) assessed to Mr. M. Thompson, by letter dated October 30, 2014, for alleged violation of Red Book of Track Requirements Section 14.6.0, Record of Track Inspections and Federal Railroad Administration Track Safety Standards Part 213.241 Inspection Records 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 Claimant M. Thompson shall be reinstated with full payment for lost compensation and benefits unimpaired.

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 October 30, 2014, the Claimant, Mr. Michael Thompson was notified by the Carrier that he was assessed the discipline of Dismissal from Service with the Canadian Pacific Railway, as follows:

Dear Sir:

As a result of the facts developed at the formal investigation hearing, held Monday, October 13th, 2014 you have been found failing to comply with Red Book of Track Requirements Section 14.6.0 Record of Track Inspections, and FRA Track Safety Standards Part 213.241, Inspection Records – failing to make record of a track inspection

on the date of the inspection. This is a result of an inspection under your responsibility in Kenwood Yard showing late in the Digital Track Notebook system on October 6, 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 on the record before this Board to set aside the discipline on the procedural grounds.

It is clear from the record before the Board, including the testimony of Senior Security Specialist Darcy McCully that Mr. Thompson failed to make a record of the track inspection (Track Number 3) on the date of the inspection, Friday, October 3, 2014 in compliance with Red Book of Track Requirements Section 14.6.0, Record of Track Inspections, and FRA Track Safety Standards Part 213.241, Inspection Records. The track inspection log was due to be complete by October 4, 2014, and was not completed in the Digital Track Notebook (DTN) until Monday, October 6, 2014.

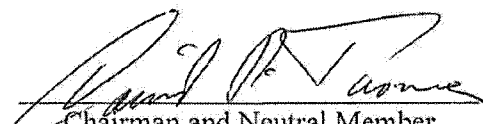
Dismissal from service was not the appropriate discipline in the context of the narrow finding of this particular investigation, that of an employee who inspected a track on Friday morning and failed to make a timely record of the track inspection that day causing a “red ball” late inspection on Track Number 3 in Kenwood Yard. Moreover, the Board takes notice that the Carrier, in assessing the quantum of discipline in this case under its U.S. Discipline Policy 5612 referenced a five-day suspension issued on April 17, 2014 alleging failure to identify an out of service defect of a wide gauge, which discipline was set aside by this Board in Award No. 51.


Strictly limited to the unusual record before this Board. The discipline of dismissal is reduced to a thirty day actual suspension for the proven violation in this case.

The Carrier is required to modify the Claimant's record to reflect the reduction of discipline from dismissal to a thirty day actual suspension.

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: 12/7/17