

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 53
Case No. 53
Carrier's File 8-01030 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 (dismissal) assessed to Mr. M. Thompson by letter dated November 14, 2014 in connection with allegations that he gave false and dishonest testimony during a hearing on October 13, 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 M. Thompson 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 and afforded all other relief as contained in the Organization's letter of appeal dated January 7, 2015.

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 November 14, 2014, the Claimant, Mr. Michael Thompson 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 Monday, November 3rd, 2014 you have been found failing to comply with General Code of Operating Rules Section 1.6, Conduct – being dishonest. This is a result of testimony

given by you during a hearing held on Monday, October 13th, 2014. Account your testimony being found inaccurate false, and dishonest.

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

s/Tim Yamashita – Regional Chief Engineer

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

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

The Carrier convened a formal investigation on November 3, 2014 alleging that the Claimant gave false and dishonest testimony during a formal investigation held on October 13, 2014.

At the formal investigation held on October 13, 2014 concerning a late Digital Track Notebook (DTN) report and failing to make record of a track inspection on the date of the inspection, Friday, October 3, 2014, the Claimant testified that he had accessed DTN from the laptop at Kenwood Yard on Friday, October 3, 2014. *

At the November 3, 2014 investigation Division Engineer Todd Dragland testified that he has responsibility for all late inspections recorded on DTN, and that the only failure he was aware of where a deficiency in the Carrier's System was raised as the problem was that raised by

*Division Engineer Dragland testified:

"I believe, when I reviewed the transcript I found there was a document. Yes, an email from Mr. Thompson dated October 7th. Mr. Thompson stated, I logged onto DTN, hit save and sign. The program processed my entry for about three minutes and it went into the next screen as it always does like the inspection was complete. The program didn't accept my signature and didn't process that I had inspected the track. I completed the inspection at around 7:55 a.m., on October 3, 2014. The time I tried to enter the inspection was around 14:30 on October 3, 2014. (Tr-16)"

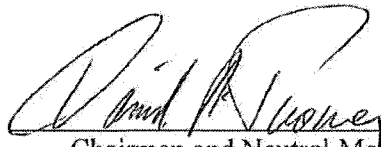
the story of Mr. Thompson. Mr. Dragland testified in part that "I can't afford to have our systems fail and not take action on that. It's a federal document that the Carrier can face a fine for not completing inspections". He thus arranged to have Internet Technology Systems at CP investigate the cause of the internet system error raised by Mr. Thompson.


Substantial evidence of record including the testimony of Senior Security Specialist Mr. Darcy McCully proves Mr. Thompson would not have logged into the DTN application, as Mr. Thompson had contended, for if he had there would have been a record of his user ID accessing the DTN cloud based application from the Carrier's gateway network and onto the internet. Company Exhibit 4, logged all of the internet activity on October 3, 2014 from 5:42 to 17:025 and shows that Mr. Thompson's user ID had not logged out of the company's network firewall and onto the internet, where the DTN online web application resides.

The Evidence of record is compelling that Mr. Thompson was in violation of GCOR, Section 1.6 Conduct, "Employees must not be ... 4. Dishonest". The Carrier must rely on its employees to perform and document the mandated safety inspection of tracks to provide a safe environment for employees and the public. Dismissal from service was neither arbitrary, capricious nor excessive considering the Claimant's prior disciplinary record. We must deny this claim.

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Award
Claim denied.


Chairman and Neutral Member


Carrier Member


Organization Member

Dated: 12/7/17