

**PUBLIC LAW BOARD NO. 7357**

**PARTIES TO THE DISPUTE:**

Brotherhood of Maintenance of Way Employees  
Division – IBT Rail Conference

Award No. 55  
Case No. 55  
Carrier's File 8-01004 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 Mr. B. Robarge by letter dated September 26, 2014 for alleged violation of Engineering Safety Rules and Engineering Core Safety Rule 1 – failing to advise and redirect to safe work practices anyone observed performing an unsafe act in connection with a motor vehicle incident on September 9, 2014 was arbitrary, capricious, 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. Robarge have his record cleared of his discipline, that he be compensated all losses suffered due to the Carrier's improper discipline and that he be afforded all other relief contained in the Organization's letter of claim dated November 11, 2014.

**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 September 26, 2014 the Claimant, Mr. Broderick Robarge, was notified by the Carrier that he was assessed the discipline of a 5-day suspension, to be served as follows:

Dear Sir:

As a result of the facts developed at the formal investigation hearing, held Tuesday, September 16, 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.

Your record has been accessed with a 5-day suspension, to be served. This suspension will begin on September 29<sup>th</sup> to October 3<sup>rd</sup>, 2014 with an expected return to work the date of October 6<sup>th</sup>, 2014.

s/Todd Dragland – Division Engineer – Northeast US Division

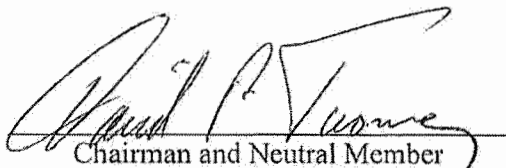
The Organization appealed the discipline, and the matter has been progressed to this Board for adjudication.

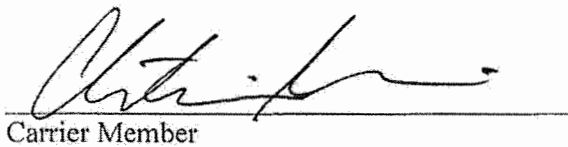
No basis exists in the record before this Board to set aside the discipline on procedural grounds.

Substantial evidence of record supports the Carrier's determination that Mr. Robarge was in violation of Engineering Safety Rules and Engineer Safety Rule 1 – for failing to advise and redirect to safe work practices anyone observed performing an unsafe act in connection with a motor vehicle incident. Mr. Robarge got back into the BTMF truck after he and Mr. Brown finished posting signs for the job to be performed on the next day, and without the performance of a job briefing or a risk assessment walk around the truck by the driver, Mr. Wade, or a designation of an individual to get out of the truck to serve as a spotter, the driver initiated a reverse move for some 200 to 300 feet before he stopped the vehicle realizing that the truck hit and damaged an AEI reader, with no damage to the truck. Mr. Robarge and the other crew members failed to challenge the driver and stop him from proceeding in the performance of this unsafe back up movement in violation of the Carrier's rules.

We find that the discipline of a 5 working day suspension was appropriate under the Company's Discipline Policy 5612. We must deny this claim.

Award  
Claim denied.

  
Chairman and Neutral Member

  
Carrier Member

  
Organization Member

Dated: 12/7/17