

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 58
Case No. 58
Carrier's File 8-01005 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 suspension] assessed Mr. F. Fierro 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 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 F. Fierro's 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 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. Frank Fierro was notified by the Carrier that he was assessed the discipline of a 5-day suspension be served, 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 – failure 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 29th to October 3rd, 2014 with an expected return to work the date of October 6th, 2014.

s/Todd Dragland – Division Engineer – Northeast US Division

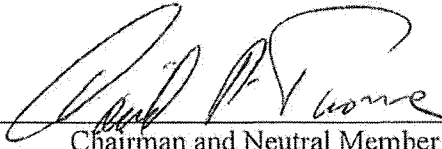
The Organization appealed the disciplined, and the matter has been progressed to this Board for adjudication.

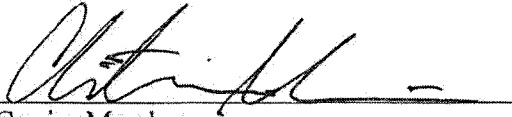
No basis exist in the record before this Board to set aside the discipline on procedural grounds.


Substantial evidence of record supports the Carrier's determination that Mr. Fierro 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. Fierro had remained in the back seat of the BTMP truck while Mr. Brown and Mr. Robage finished posting signs for the job to be performed on the next day. Upon their return to the truck and without the performance of a job briefing, or a risk assessment walk around the truck by the driver, Mr. Wade, or 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, but with no damage to the truck. Mr. Robage 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 five-day suspension was in compliance with Company Policy 5612. We must deny this claim.

Award
Claim denied.


Chairman and Neutral Member


Carrier Member


Organization Member

Dated: 12/7/17