

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 59
Case No. 59
Carrier's File 8-01059 DHR

-and-

Delaware and Hudson Railroad Company d/b/a Canadian Pacific Railway

STATEMENT OF CLAIM:

1. The discipline (dismissal) assessed Mr. T. Reed, by letter dated April 2, 2015, for alleged failure to re-apply or replace anchors that were removed when a replacement rail was installed on February 4, 2015 was arbitrary, excessive and without just and sufficient cause.
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant T. Reed 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.

FINDINGS:

This Public Law Board No. 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 2, 2015 the Claimant Mr. Thomas Reed 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, March 23rd, 2015 you have been found failing to comply with Red Book of Track Requirements for Maintenance of Continuous Welded Rail section 7.6.3 Anchors part d. – failing to re-apply or replace the anchors that were removed when a replacement rail

was installed. This is a result of a rail replaced under your responsibility on the Canadian Subdivision being noted as not complying with written CWR Maintenance procedures during an inspection of the Canadian Subdivision on March 11th, 2015.

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

s/Denis Sauve – Director Track

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.

At approximately 14:00 hours on February 4, 2015, Mr. Reed, a Track Foreman headquartered in Sarasota NY and his crew were assigned by Roadmaster Vanderpool to replace a defective 20-foot segment of Continuous Welded Rail (CWR) at MP 21.8 on the Canadian Subdivision. Due to extreme cold weather, the ballast had frozen rock solid and after two comprehensive attempts to replace anchors were unsuccessful, Mr. Reed made the decision that they would have to come back later when the frost had melted to reapply the anchors. Mr. Reed selected the box in the Digital Track Notebook that designated final repairs were needed; and he and his crew finished their twenty-hour work day.

The Red Book of Track Requirements, Section 7.6.3 d. for CWR states:

Where replacement rails are installed, re-apply or replace the anchors that were removed.
Box anchor at least every second tie on both the repair rail and the adjoining CWR.
Anchors should bear on the same tie when box anchoring on every second tie.

On March 11, 2015 the Carrier was cited for defects at the location MR 21.8 locator where Mr. Reed did not apply the anchors.

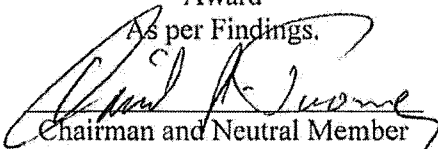
Mr. Reed testified in part as follows:

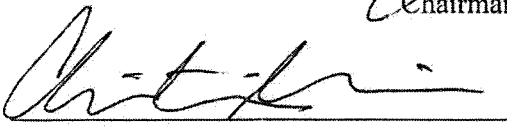
- Q. Okay. We saw the text message. In the text message it didn't seem to show anything specific that said you were complete with all the repairs?
- A. No, I never specified the rail repair was complete.
- Q. **A later date, at any time after that did you tell your roadmaster, Jeremy Vanderpool, there were still anchors to be replaced?**
- A. No. I told the track patrolman Arquette that I would like to work with him at some point to reapply the anchors.
- Q. On the date of the FRA inspection, March 11th, had they been replaced at that point?
- A. I had not done any replacements. (Tr. 27).
(emphasis added)


The record establishes that Mr. Reed did not report the need for additional anchors to be replaced to Roadmaster Vanderpool or any other CP manager. Nor had Mr. Reed, himself made an attempt to complete the task of reapplying the anchors as of March 11, 2015.

The Claimant's failure to notify a Carrier official that he did not comply with the Red Book of Track Requirements for Maintenance of Continuous Welded Rail (CWR) – section 7.6.3 part d. to place sufficient amount of anchors when replacing a segment of CWR was a serious track safety violation very important to the overall safety of the Railway. Weighing all of the circumstances of this case, along with Mr. Reed's service record, any discipline beyond a sixty-day actual suspension is excessive. Mr. Reed shall be reinstated to service with all rights unimpaired and he shall be paid for all time lost beyond a sixty-day calendar day suspension, less his outside earnings for the period beyond the sixty-day suspension period. Jurisdiction is retained on the matter of remedy.

Award
As per Findings.


Chairman and Neutral Member


Carrier Member


Organization Member

Dated: 12/7/17