

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 60
Case No. 60
Carrier's File 8-01061 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 [ten (10) day actual suspension] assessed to Mr. J. Jackson by letter dated April 29, 2015 for alleged violation of Engineering Safety Rule E-2 on or about February 9, 2015 was arbitrary, without just cause and constituted a violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall overturn the discipline and that the Carrier develop and publish a Corrective Action Plan on how to address the underlying issue.

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 April 29, 2015, the Claimant, Mr. J. Jackson, was notified by the Carrier that he was assessed the discipline of a 10-day actual suspension as follows:

Dear Mr. Jackson,

As a result of the facts developed at the formal investigation hearing, held on Monday, April 13th, 2015 at 13:00 In Oneonta NY you have been found to be in violation of Engineering Safety Rule E-2.

E-2 Vehicle Used for Company Business

1. Operate all vehicles in a controlled and careful manner to prevent accidents, or collisions with other vehicles and objects.

You are suspended for 10 Days. Effective Thursday, June 11th, 2015 returning on June 26th, 2015.

s/Doug Lane (Manager Bridge Maintenance NEUS)

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.

Mr. Jackson's vehicle was stuck in the snow and he called Ken Harrington to come up with the loader to pull him out. As Mr. Harrington was pulling Mr. Jackson out, Mr. Jackson's vehicle kept sliding further down the hill, but Harrington kept pulling and as he did Mr. Jackson could feel a plastic pipe scrape across the two doors on the passenger side. (See Tr. 21)

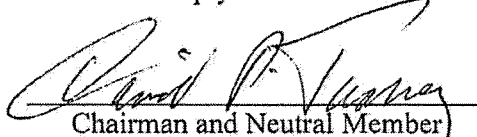
Mr. Jackson testified that he had no control over the vehicle as follows:

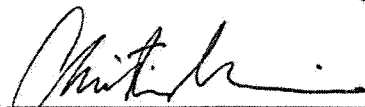
A. I – I had no control. I was trying to give it what gas I could and what traction I could to help get me out of the swamp there. (Tr. 13)

We find that the Carrier has not met its burden of proof that Mr. Jackson was in violation of Engineering Safety Rule E-2. We must sustain the claim to the extent of overturning the discipline and payment for all time lost.

Award
Claim sustained.

ORDER: The Carrier shall comply with this award within thirty (30) days.


Chairman and Neutral Member


Carrier Member


Organization Member

Dated: 12/7/17