

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 61
Case No. 61
Carrier's File 8-01062 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 [thirty (30) day actual suspension and permanent disqualification as a foreman] assessed to Mr. J. Jackson by letter dated April 29, 2015 for alleged violation of General Code of Operating Rules (GCOR) 1.1.3 Accident, injuries Defects and GCOR 1.6 was arbitrary, capricious and without just or sufficient cause and constituted a violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant J. Jackson's record be cleared of all mention of the incident; that he be made whole for all time lost as a consequence of the suspension; and that he be provided all difference in pay suffered as a consequence of the permanent disqualification from the foreman classification as well as all other relief contained in our letter of claim dated June 30, 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 April 29, 2015, the Claimant, Mr. Jeffery Jackson was notified by the Carrier that he was assessed a 30-day 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 12:00 In Oneonta NY. You have been found to be in Violation of GCOR 1.1.3 and GCOR 1.6.

1.1.3 Accident, Injuries Defects

Report by first means of communication any Accidents, personal defects in tracks Bridges, or Signals, or any Unusual Conditions that may affect the safe and efficient operation of the railroad. Where required, furnish a written report promptly after reporting the incident.

1.6 Conduct

Employees must not be:

1. Careless of the safety of themselves or others
2. Negligent
3. Insubordinate
4. Dishonest
5. Immoral
6. Quarrelsome

Or

7. Discourteous

Any act of hostility, misconduct or willful disregard or negligence affecting the interest of the Company or its employees is Cause for dismissal and must be reported.

Indifference to duty or to the performance of duty will not be tolerated.

You are suspended for 30 Days. Effective Thursday, April 30th June 10th, 2015 returning On June 11th, 2015 and your Position as an employee in charge (Foremen Position) is permanently restricted at CP Rail.

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 to set aside the discipline on procedural grounds.

Substantial evidence of record supports the Carrier's determination that Mr. Jackson was in violation of GCOR 1.1.3 which failed to report by first available means the damage to a company vehicle; and GCOR 1.6 negligence in not reporting the incident (See Tr. 31 where Mr. Jackson admitted that he was negligent in not reporting the incident).

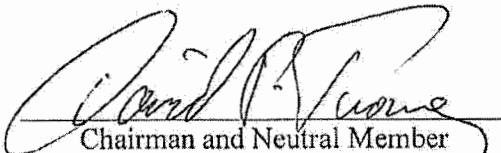
Mr. Jackson testified how he was plowing snow and perhaps had a foot of snow stuck with ice underneath when his truck got stuck, and when the front-end loader was pulling him he


could feel a pipe slide against the door as he was being pulled out. The reason why he did not report it was that he was scared of losing his job. (Tr. 30)

Mr. Jackson has been employed by the Carrier since August 1984 and has been a bridge and building foreman since 2009. In Award No. 60 of this Board we found that the Carrier failed to prove an Emergency Safety Rule E-2 violation and we set aside the discipline in that case. We shall reduce the thirty-day suspension in this case to a 10-day actual suspension reflective of a progressive approach to discipline, and he shall be made whole for time lost as a result of this adjustment. We make no adjustment to the Carrier's restriction of record as to the Claimant's status as an employee in charge (Foreman Position).

Award
As per Findings.

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


Chairman and Neutral Member


Carrier Member


Organization Member

Dated: 12/7/17