

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 62
Case No. 62
Carrier's File 8-01063 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 to Mr. S. Potter by letter dated April 7, 2015 for alleged violation of General Code of Operating Rule (GCOR) 1.1.4 Condition of Equipment and Tools and FRA 49 CFR 214.527 on April 2, 2012 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 reverse the discipline decision and Claimant S. Potter shall be made whole, including all straight time and overtime hours lost or denied as a result of the 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 April 27, 2015, the Claimant, Mr. Stefan Potter, was notified by the Carrier that he was assessed the discipline of a 5-day suspension from service as follows:

Dear Mr. Potter,

As a result of the facts developed at the formal investigation hearing, held on Monday, April 13th, 2015 you have been found to be in Violation of GCOR Rule and FRA 49CFR214.527.

1.1.4 Condition of Equipment and Tools

Employees must check the condition of equipment and tools they use to perform their duties. Employees must not use defective equipment or tools until they are safe to use. Employees must report any defects to the proper authority.

Canadian Pacific is also mandated by 49CFR 214.527, section a. of the Federal Code of Regulations to require an inspection of on track Roadway Equipment by the operator prior to using machine at start of days shift.

Canadian Pacific uses and trains the machine operators to use the Daily Safety Inspection & Planned Maintenance Record (log book) to document these inspections.

You are suspended for 5 Days. Effective immediately after returning to service.

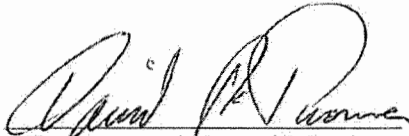
s/Joffre Roy – Director Track Renewal Canada East

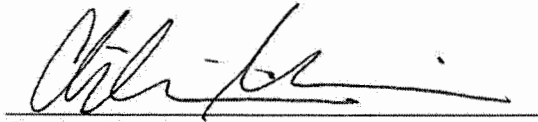
The Organization appealed the discipline, and the matter has been progressed to this Board for adjudication.

No basis exist in the record before this Board to set aside the 5-day disciplinary suspension in this case on procedural grounds.

The Claimant had been given a copy of the Carrier's Daily Safety Inspection and Planned Maintenance Record, referred to as the log book or yellow book by Track Renewal Specialist Delamater, at the start of the shift. Thereafter the crew proceeded to Rouses Point where there was approximately a two-hour delay waiting for Amtrak Train 69 to pass before starting work, and crew members were instructed to perform their daily inspections. Mr. Potter testified that "I did do an inspection, but apparently I failed – or to properly document it" ... and sign off on it". (Tr. 37, 38). Accordingly, we find that the Carrier has met its burden of proof that Mr. Potter failed to document the Daily Machine Inspection in the yellow book prior to operating the Plate Plucker machine as required by the Carrier's rules. Strictly limited to the facts of this particular case we find that the discipline assessed of a five-day suspension is neither arbitrary, capricious nor excessive. We must deny this claim.

Award
Claim denied.


Chairman and Neutral Member


Carrier Member


Organization Member

Dated: 12/7/17