

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 64
Case No. 64
Carrier's File 8-01064 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 [twenty (20) day actual suspension plus a one (1) year suspension as an Employee in Charge] assessed to Mr. N. Maxwell by letter dated July 1, 2015 for alleged violation of On Track Safety Rules Section 29.3 B Responsibilities of Employee in Charge, Section 30.1 Conducting a Job briefing, 21.0 on Track Safety Procedures and Section 21.1 Occupying a Fouling Controlled Tracks on June 8, 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 reverse the discipline decision and make Claimant N. Maxwell whole for all losses suffered, 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 July 1, 2015, the Claimant, Mr. N. Maxwell, was notified by the Carrier that he was assessed the discipline of a 20-day suspension and a 1-year suspension as an Employee in Charge as follows:

Dear Mr. Maxwell:

As a result of the facts developed at the formal investigation hearing, held on Monday, June 15th, 2015 at Oneonta, NY. You have been found to be in Violation of On Track

Safety Rules Section 29.3 B. Responsibilities of Employee in Charge, Section 30.1 Conducting a Job Briefing, 21.0 On Track Safety Procedures, and Section 21.1 Occupying or Fouling Controlled Tracks.

You are:

Suspended for 20 Days. Time served Pending investigation will be used your suspension will be Effective beginning 6/9/2015 to 7/5/2015 you may return to service on 7/6/2015 you will also be assessed a 1 year suspension as an Employee in Charge beginning June 9th, 2015 until June 9th, 2016.

s/Joffre Roy – Director Track Renewal Canada East

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

No basis exist to set aside the discipline in this case on procedural grounds.

Substantial evidence of record, including the testimony of the Roadmaster Zachary McHale and Claimant Nicholas Maxwell himself supports the Carrier determination that Mr. Maxwell was in violation of On Track Safety Rules Section 29.3 B. Responsibilities of Employee in Charge, Section 30.1 Conducting a Job Briefing, 21.0 On Track Safety Procedures, and Section 21.1 Occupying or Fouling Controlled Tracks on June 8, 2015. As a result of the rules violations eight machines and operators occupied the main track north of CPC 35 without authority. Mr. McHale, after hearing the radio conversation between lead machine operator Valentine and Mr. Maxwell, then observed the equipment north of CPC 35, and had the operators back up south of CPC 35 to territory where the crew had track and time authority. Mr. Maxwell testified in part:

Q. So in the end whose – whose responsibility was the protection of the teams?

A. That would be me. Ultimately it comes down to me.

Q. And were they on track unprotected?

A. Yes.

Q. Okay.

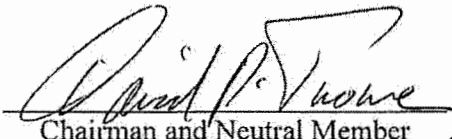
A. But they knew – ultimately, it's my fault and I know – and I know that, but with a switch yes it doesn't mean you can continue on north if they knew where they were in the east runner. I still know it's my fault, you know what I'm saying? That's –

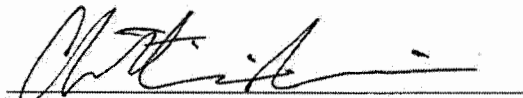
Q. Did you – did you have a job briefing with the team after you got to CPC 35, like any type of follow up job briefing or anything like that?

A. No. (Tr. 73)

The discipline assessed in this case was 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