

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 68
Case No. 68

-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 [fifteen (15) demerits (corrected to ten (10) demerits) and restricting from operating a Company vehicle for a period of thirty (30) days, except under the direct supervision of a CP manager; completion of a defensive driving course; manager evaluation for fitness for operation of a company vehicle] assessed to Mr. W. Cremo, Jr., by letter dated December 21, 2018, for alleged violation of CP Engineering Safety Rule Book: E-0: Job Safety Briefing and CP Engineering Safety Rule Book E-2: Vehicles Used for Company Business 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, Claimant W. Cremo, Jr. shall have his discipline ‘... removed and expunged from his record in its entirety, he be returned to having Driving Privileges, without restriction and that he be compensated for any and all monies he has lost in work opportunities.

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 December 21, 2018, the Carrier notified the Claimant, Mr. William Cremo Jr. that he was assessed the discipline of fifteen demerits as follows:

Dear Sir,

This correspondence is being provided in reference to the initial Notice of Formal Investigation that was issued to you under the date of November 28, 2018. The Notice of Formal Investigation was in connection with your tour of duty on November 16, 2018, specifically your operation of a motor vehicle that came in contact with a switch stand in Saratoga Yard, causing damage to the vehicle and the switch stand. Subsequent to the Notice of Formal Investigation, a formal

investigation was conducted on November 30, 2018 to develop all facts and circumstances in connection with the referenced incident. Upon a review of the transcript of the investigation it has been determined that the hearing record contains substantial evidence and proof that you violated the following rules:

- CP Engineering Safety Rule Book E-0: Job Safety Briefing
- CP Engineering Safety Rule Book E-2: Vehicles Used for Company Business

Based on the facts and evidence in the hearing record, the severity of the incident and your past discipline history, you are hereby assessed a discipline of **15 demerits, and will be restricted from operating a Company vehicle for a period of 30 days, except under the direct supervision of a CP manager. During this 30-day period you will be required to complete a defensive driving course. After the 30 day period is completed, your manager will evaluate your fitness for operation of a company vehicle.**

Sincerely,
s/Karl Rittmeyer
Assistant Chief Engineer Structures – East

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

On the record before the Board, a basis does not exist to set aside the discipline on the procedural grounds raised by the Organization.

I.

The Carrier's charge against the Claimant stated that "the vehicle you were operating made an unsafe backing movement". The Claimant in his handwritten statement after the event and his testimony at the investigation was forthright in taking responsibility. His statement soon after the event follows:

Q. Would you mind just reading the written statement?

A. 11/16/18, 06:10. To whom it may concern. I came into work at 04:00 hours. I shoveled snow and salted around the walkways at the engine house and managers building. At approximately 05:15 Joe Belmonte returned from plowing other locations. I went with him and he showed me how to run the tractor since I had never ran it before. I loaded the spreader with salt. I dropped Joe off at his truck and started plowing the south end of the east side. After plowing my way south I was backing up and I heard a noise. I got out to check it out and so that I had backed into a switch stand, the second switch north of the Geyser Road Bridge, damaging both the truck and the switch stand. I called Dan Golden and he told me to tell the track department. I did and then parked the truck. William A. Cremo, Jr.
(Tr. 12)

Mr. Cremo testified in part as follows:

Q. Understood. Referencing Carrier Exhibit number 11, item one, under E-2, vehicles used for Company business, describes the safe operation of a vehicle. Do you feel you complied with that rule that day?

A. Well, no one intentionally backs into a switch stand. I checked my mirrors, I thought I was clear. I proceeded to back up. I was wrong. I did not deny that I hit it. As I said, it was dark. It was whiteout conditions. I was best as I could tell. And from just the relationship, you know, I drove past it, I knew it was there. I looked in my mirrors. The obstruction, the rearview mirror was obstructed by the salter. I looked in the side-view mirror. I may have looked over it because it so low. But I assumed I was in the clear. From my, from the best that I could tell, I wasn't going to hit it or I would not have made the reverse move. It's one of those things.

(Tr. 34, 35)

II.

We find that the Claimant is responsible for making the unsafe backward movement as charged. And, it was proper and responsible for the Carrier as a result to restrict the Claimant from operating a company vehicle for thirty days while he completed a defensive driving course, with a subsequent evaluation by his manager. Under the circumstance where Mr. Cremo was placed on a tractor in a snow storm in the dark in whiteout conditions and he had to be shown how to run the vehicle since he had never run it before 15 demerits reduced to 10 demerits was inappropriate. We find that a formal reprimand was the appropriate discipline, along with the appropriate restrictions and training.

III.

The Carrier's Hybrid Discipline and Accountability Guidelines effective November 1, 2018 states in part that demerits will be used for non-major offences. Paragraph 3 states:

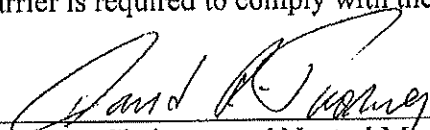
Employees who are discipline free in all three (3) categories for a rolling 12-month period and who have rendered active service during each of the 12-months within that period, and have demerits on their record, will have a maximum of twenty (20) demerits removed from their discipline record.

It was established at the January 12, 2022 hearing of this case before this Public Law Board that the Claimant's record is now clear, with all demerits having been removed from the active discipline process under the above set forth guidelines. Under the November 1, 2018 Guidelines

the formal reprimand will remain on his record, but will not be considered for the purposes of assessing any future discipline.

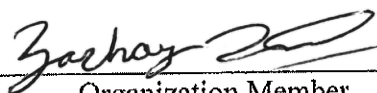
AWARD
As per findings

Order: The Carrier is required to comply with the Award within thirty days.


Chairman and Neutral Member



Carrier Member


Organization Member

Dated: January 26, 2022