

**PUBLIC LAW BOARD NO. 7357**

**PARTIES TO THE DISPUTE:**

Brotherhood of Maintenance of Way Employes  
Division – IBT Rail Conference

Award No. 69  
Case No. 69

-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] imposed by letter dated March 11, 2019, upon Mr. W. Cremo, Jr. for alleged violation of Engineering Safety Rule Book: Core Safety Rule 1 – Rights and Responsibilities and Engineering Safety Rule Book: E-0 Job Safety Briefing was arbitrary, capricious and without just or sufficient cause and constituted a violation of the Agreement. (System File Cremo 15 D 03,11.19/USA-D&H-BMWE-2019-00007061).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Cremo, Jr. shall have the assessment of fifteen (15) demerits removed from his file and expunged from his record in its entirety.

**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 March 11, 2019, the Carrier notified the Claimant, Mr. William Cremo Jr. that he was assessed the discipline of fifteen demerits as follows:

Dear Sir,

... The Notice of Formal Investigation was in connection with your tour of duty on Thursday, February 9, 2019, specifically your failure to complete written job briefing prior to commencing work.

In the Notice of Formal Investigation, you were charged with violation of the following (3) three rules:

- ➡ Engineering Safety Rule Book: CORE Safety Rule 1 – Rights and Responsibilities
- ➡ Engineering Safety Rule Book: E-0 Job Safety Briefing
- ➡ US Rulebook for Engineering Employees: 30.0 Job Briefing

Subsequent to the Notice of Formal Investigation, a formal investigation was conducted on February 22, 2019 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 (2) rules:

- ➡ Engineering Safety Rule Book: CORE Safety Rule 1 – Rights and Responsibilities
- ➡ Engineering Safety Rule Book: E-0 Job Safety Briefing

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 fifteen (15) demerits as a *Second Non-Major Offense* in accordance with the *Hybrid discipline and Accountability Process* (the "Process"). You are currently at step 3 of the *Non-Major Offences* in the *Process*....

Sincerely,  
s/Karl Rittmeyer  
[Assistant Chief Engineer Structures-East]

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

## I.

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

The record is clear that the Claimant, Foreman William Cremo was the Employee in Charge on the morning of February 9, 2019. Under Rule 30.0 Job Briefing – "The Job Briefing will be so recorded in writing by the Employee in Charge and/or other employees as required". The record established that the Claimant admitted that he had not filled out his job briefing book as required, and his testimony showed that he knew he was supposed to do so. We find that the Carrier has met its burden of proof in this case. We find that the discipline of fifteen demerits issued was consistent with the Carrier's discipline guidelines. We must deny this claim.

## II.

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

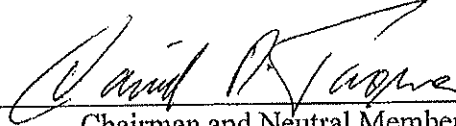
Employees who are discipline free in all three (3) categories for a rolling 12-month period and who have rendered active service during each of the 12-months

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 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 15 demerits remain on the Claimant's record but are no longer active for the purposes of assessing discipline.

AWARD

Claim denied as per findings

  
Chairman and Neutral Member



Carrier Member

  
Organization Member

Dated: January 26, 2022