

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 70
Case No. 70

-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 and the completion of a defensive driving course] assessed to Mr. J. Crandall, by letter dated July 19, 2019, for alleged violation of CP Engineering Safety Rule Book E-2 – Vehicles Used for Company Business and US Rulebook for Engineering Employees: 1.1 Safety was arbitrary, capricious and without just or sufficient cause and constituted a violation of the Agreement (Carrier's File USA-D&H-BMWE-2019-00010004).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Crandall shall have his entire discipline set aside in its entirety.

FINDINGS:

This Public Law Board No. 7357 finds that the parties are Carrier and Employees, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated July 19, 2019, the Carrier notified the Claimant, Mr. Joel Crandall that he was assessed the discipline of fifteen demerits. The letter stated in part:

Dear Sir,

... The Notice of Formal Investigation was in connection with your tour of duty on Friday, June 14, 2019, specifically your failure to operate a company vehicle safely resulting in an at fault motor vehicle accident.

Subsequent to the Notice of Formal Investigation, a formal investigation was conducted on June 27, 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: E-2 Vehicles Used for Company Business**
- ➡ **US Rulebook for Engineering Employees: 1.1 Safety**

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 will also be required to complete a defensive driving course provided by CP to 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.

No basis exists in the record before the Board to aside the discipline on the procedural grounds raised in the handling on the property. It is disappointing to hear that the Claimant had to travel 100 miles to attend the investigation. However, the Carrier's statement that the investigation was held at the most reasonable location where facilities were available has not been rebutted.

The Claimant admitted that he hit the guardrail at the Stewart gasoline station in Port Henry, New York, when he moved over slightly to get out of the way of another vehicle headed to come through the same opening at the gas station. And, when he did make this move he made contact with a guardrail causing minor damage to his Company vehicle. This testimony of the Claimant and the testimony of Steven Brooks, manager of Bridge Maintenance who responded to the scene is substantial evidence of record supporting the Carrier's determination that the Claimant was responsible for violation of ES Safety Rule Book: E-2-Vehicles Used for Company Business and GCOR 1.1 Safety. We find that the discipline assessed by the Carrier's in its July 19, 2019 letter of 15 demerits was neither arbitrary, capricious nor excessive.

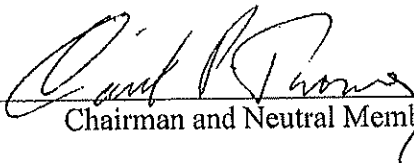
The Carrier's *Hybrid Discipline & Accountability Guidelines*, effective November 1, 2018, states in part that demerits will be used for non-major offenses. Paragraph 3 states:

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 demerits remain on his record but are no longer active for the purposes of assessing discipline.

AWARD
Claim Denied as per finding.


Chairman and Neutral Member


Carrier Member


Organization Member

January 26, 2022
Dated: _____