

PUBLIC LAW BOARD NO. 7599

AWARD NO. 22
CASE NO. 22

PARTIES TO

THE DISPUTE: Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

vs.

Grand Trunk Western Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The suspension of Mr. A. Deloney for violation of USOR General Rule L - Communication and Electronic Devices in connection with alleged unauthorized use of a cell phone while performing duties as a machine operator on August 22, 2014 was arbitrary, capricious, unwarranted and in violation of the Agreement (Carrier's File GTW-BMWED-2015-00002 GTW).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Deloney shall be granted the remedy in accordance with Rule 25, Section 4 of the Agreement."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was disciplined with a 20-day actual suspension for the reason shown in the Statement of Claim above. At the time of the incident, he had some eleven (11) years of service with the Carrier. His work record had several previous disciplinary entries including a 5-day and a 20-day suspension, 10 days of which was deferred.

Our review of the investigation transcript does not reveal any procedural or due process shortcomings that require disposition by this Board. On the merits, the record establishes that Claimant was a machine operator in the Carrier's Engineering Department on the day in question. It is unrefuted in the record that the Carrier's US Operating Rules that prohibit the use of cell

phones while on duty apply to Engineering Department personnel. According to the testimony of an Engineering Supervisor, Claimant was observed to be using his thumb to scroll the display on his cell phone at approximately 1307 on the day in question. This was while his machine was inching forward.

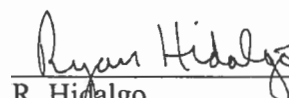
Claimant denied using his phone while on duty and contended that the supervisor's observation was mistaken. Claimant's shift hours run from 1000 until 1800 and cell phone records show that several calls were made to and from his phone during those hours. Although no call was shown in progress at or about 1307, the testimony suggests that Claimant's use of the phone was for texting, which apparently would not be reflected in the call records. The record also confirms that Claimant had some issues with his son that day, and this corroborates, to a significant extent, the content of the conversation the supervisor had with Claimant about the unauthorized use of his cell phone.

Given the state of the record, we find the Carrier's determination that Claimant violated applicable cell phone usage rules while on duty is supported by substantial evidence in the record. Because of Claimant's previous discipline history, we do not find the Carrier's disciplinary action to be excessive, harsh, or unreasonable. Accordingly, we find no proper basis for disturbing the Carrier's disciplinary decision.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. Hidalgo,
Organization Member


C. K. Cortez,
Carrier Member

Date: 2-8-2018