

**PUBLIC LAW BOARD NO. 7988**

**CASE NO. 10  
AWARD NO. 10**

**Brotherhood of Maintenance of Way Employees  
Division - IBT Rail Conference**

**and**

**Soo Line Railroad Company**

**Claimant: D. Stoeckly  
System File No. D-72-20-445-38  
Carrier File No. 2021-00021536**

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**BACKGROUND:**

On October 29, 2020 the Carrier issued to Claimant D. Stoeckly a notice of formal investigation and hearing which stated, in part, as follows:

The purpose of this investigation/hearing is to determine the facts and circumstances and to place your responsibility, if any, in connection with you allegedly stepping on the side step of a piece of moving on-track work equipment and reaching inside the back of a bin to retrieve spikes on Wednesday, October 21, 2020. This indicates a possible violation of, but not limited to, the following rules:

- **US Rulebook for Engineering Employees 29.2 (B) Roadway Worker**

On the agreed-upon date of January 19, 2021 the investigation/hearing convened. Claimant, with representation assistance, presented testimony and examined the Carrier's witness and five (5) exhibits.

On February 10, 2021 the Assistant Chief Engineer - Chicago notified Claimant that he violated the charged rule.

Based on the facts and evidence in the hearing record, the severity of the incident, and your past discipline history, you are hereby issued discipline of twenty (20) days suspension served without pay[.]

**WARNING: You are currently at step 1 of the *Major Offences* in the *Process*. Please consult the *Process* to learn how you can improve your discipline standing.**

On April 8, 2021 the Organization filed an appeal; the Carrier denied the appeal on May 14, 2021. The dispute remains unresolved following conference on September 1, 2021. In accordance with the Agreement dated December 16, 2021 the dispute is before the Board for review and decision.

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## **FINDINGS:**

Public Law Board No. 7988, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

As stipulated in Paragraph (H) of the Agreement, the record in this proceeding “will be limited to the notice of investigation, transcript of investigation, letter assessing discipline, and correspondence exchanged on-property, as applicable.” Additionally “[t]he Neutral Member shall have the authority to require the production of such additional evidence, either oral or written, as he or she may desire from the parties.” The Neutral Member did not require additional oral or written evidence.

The well-established and recognized function of the Board in this appellate forum is to review the record. The scope of the Board’s review is recited in Third Division Award No. 21299 (as quoted by the Carrier in its response to the appeal):

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier’s, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing

Carrier's penalty unless we can say it clearly appears from the record that Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

In this disciplinary dispute, the Carrier's responsibility is to present substantial evidence that (1) establishes facts supporting the charged rule violation and (2) shows that the discipline assessed is appropriate for the infraction. Substantial evidence is positioned at the base of the evidence tier compared to preponderance of the evidence, clear and convincing evidence or beyond a reasonable doubt. Claimant acknowledged, as soon as the Roadmaster inquired at the moment of the incident, that he stepped on the side step of moving on-track work equipment and reached inside the back of a bin to retrieve spikes. Applying Third Division Award No. 28484 ("[w]here, as here, there is an admission of guilt, there is no need for further proof"), Claimant's acknowledgement is substantial evidence that he violated US Rulebook for Engineering Employees 29.2 - Roadway Worker, Part B, Working on or Around Self-Propelled Equipment, item 3 - "[m]ust not get on or off moving equipment, except in cases of emergency."

As for the discipline assessed, the record shows it is not appropriate but punitive and harsh. The decision states that Claimant committed a "Major Offence" violation which, under the Carrier's Hybrid Discipline & Accountability Guidelines (the *Process*), subjects the offender to a suspension. The Organization's appeal and conference letter, dated September 2, 2021 notes that the *Process* identifies Claimant's rule violation as a "Non-Major Offence" requiring the Carrier to offer Claimant an option to accept responsibility and waive the formal investigation for a formal reprimand or elect a formal investigation and, if found culpable, may be assessed a maximum of ten (10) demerits.

The Carrier did not inform Claimant of his options for a non-major infraction; the Carrier issued a formal notice of investigation and hearing. The Claimant assessed Claimant a 20-day suspension based on a major offense infraction; suspension is not appropriate under the *Process* for a first time offense that is a non-major infraction. In the circumstances established in this proceeding the Carrier assessed Claimant a penalty outside the framework it set in the *Process*. Given this framework and applying it to Claimant's non-major infraction shows the suspension is a harsh penalty rendering it punitive in nature rather than corrective.

The Carrier relies on the Engineering Department's Critical Life Saving rules and events to elevate and transform a first time non-major offense to a major offense. Aside from a sentence referring to these rules and events and the purported role of them in the outcome under the *Process*, they are not in the record through on-property exchanges or witness testimony at the formal investigation and hearing. Since they are not in the record, the Board's review will focus on the *Process*.

Based on the finding that the assessed discipline is not appropriate but harsh and punitive, the Board will sustain the appeal and grant the requested remedy. Specifically - -

As a remedy, the twenty (20) day suspension shall be set aside, all notations of this discipline be expunged from all Carrier records, including the Claimant's personal record, and the Claimant shall be made whole for any of those losses he may experience as a result of this assessment of discipline, as set for above within this appeal.

**AWARD:**

Appeal sustained.

The Carrier is ordered to make the Award effective on or before 30 days following the date of the Award.



Patrick Halter  
Neutral Referee

Dated: 8/11/2022



Erica Barnard  
Carrier Member  
Dated: August 11, 2022



John Schlismann  
Employee Member  
Dated: August 11, 2022