

PUBLIC LAW BOARD NO. 7988

**CASE NO. 12
AWARD NO. 12**

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

and

SOO Line Railroad Company

**Claimant D. Stoeckly
System File No. D-47-21-435-02
Carrier File No. 2021-00024554**

BACKGROUND

In 2018 Claimant D. Stoeckly entered service with the Carrier and, as of 2021, occupied a Machine Operator position. On June 16, 2021 the General Roadmaster arrived at the tracks in Elbow Lake (MN) to conduct efficiency testing. He discovered Claimant's personal electronic device ("cell phone") was activated ("on") in Claimant's lunchbox stored in the cab of the machine operated by Claimant.

On June 21, 2021 the Assistant Chief Engineer - St. Paul issued to Claimant a notice of formal investigation and hearing stating:

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 having your personal electronic device turned on in the cab of the machine that you were operating while on duty June 16, 2021. This indicates a possible violation of, but is not limited to, the following rules:

➤ **US Rulebook for Engineering Employees 29.1.E Electronic Devices**

The parties agreed to convene for the investigation/hearing on July 16, 2021 wherein Claimant and his representative presented testimony and examined the Carrier's witness and two (2) exhibits.

On July 29, 2021 the Assistant Chief Engineer - St. Paul notified Claimant that “a review of the transcript of the investigation . . . contains substantial evidence and proof that you violated” Rule 29.1.E Electronic Devices. “Based on the facts and evidence in the hearing record, and your honesty and willingness to take responsibility demonstrated during the hearing, you are hereby issued discipline as a **Formal Reprimand**.” This placed Claimant at Step 1 of the Non-Major Offenses under the Hybrid Discipline and Accountability Guidelines.

On September 20, 2021 the Organization appealed Claimant’s discipline. A Formal Reprimand is punitive, not corrective, as Claimant engaged in no deliberate wrongdoing and proactively initiated measures to ensure no repeat of this incident. Claimant stored his cell phone in his lunchbox; it was inadvertently activated when jostled by machine vibration. The intent of Rule 29.1.E - - ensure that employees are not using and distracted by electronic devices while on duty - - is not diminished by rescinding Formal Reprimand because Claimant was not distracted but performing his duties when his cell phone was inadvertently activated.

On November 15, 2021 the Carrier denied the appeal noting that Claimant received a fair and impartial hearing and acknowledged his cell phone was activated when he was on duty operating a machine in violation of Rule 29.1.E Electronic Devices. The Carrier leniently assessed Claimant a Formal Reprimand and considered this incident a non-major offense instead of a twenty (20) day suspension for a major rule violation when this situation occurs.

Following conference on April 19, 2022 and exchange of post-conference letters, the dispute remains unresolved and has been advanced to the Board for review and decision.

FINDINGS

Public Law Board No. 7988, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee 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 this hearing and did participate therein.

This proceeding before the Board was conducted pursuant to the PLB Agreement dated December 16, 2021 where Paragraph (H) states, in part, as follows:

The parties agree that their . . . documentation will be limited to the notice of investigation, transcript of investigation, letter assessing discipline, and correspondence exchanged on the property, as applicable. . . . However, the 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 parties anticipate that cases will be routinely

handled by the Board without any oral argument . . . In the event of an oral hearing . . . [n]o new evidence will be presented[.]

The Board's findings are drawn from the record defined by Paragraph (H) and evaluated in accordance with recognized and enduring precedent in railroad arbitration where the Board exercises its authority in an appellate forum. The scope of that authority is described in Third Division Award 21299 quoted in the Carrier's letter denying 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 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 the Carrier's action with respect thereto was discriminatory, unjust or unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

Claimant acknowledged his cell phone was mistakenly or inadvertently activated on June 16, 2021 during work hours. This violates Rule 29.1.E Electronic Devices. In recognition of Claimant's candor during the formal hearing and investigation, the Carrier assessed this incident as a non-major rule violation with Formal Reprimand instead of a major rule violation and 20-day suspension. Claimant's prior discipline dated February 2021 was a major rule infraction assessed a 20-day suspension. Applying precedent in Third Division Award 21229 to these findings, the Board will deny this claim.

Award

Claim denied.

/s/ Patrick Halter

Patrick Halter

Neutral Member

Dated: March 15, 2023



Brian Scudds
Carrier Member

Dated: March 15, 2023



John Schlismann
Employee Member

Dated: March 15, 2023