

PUBLIC LAW BOARD NO. 7988

CASE NO. 17 AWARD NO. 17

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

and

**SOO Line Railroad Company
d/b/a Canadian Pacific**

**Claimant: B. Horstman
System File No. D-32-22-445-02
Carrier File No. 2022-00029906**

BACKGROUND:

Calendar year 2022 marked twenty-eight (28) years of service for Claimant B. Horstman with the Carrier - CP. On May 11, 2022 Claimant was assigned as Foreman for the B&B Steel Erector Crew. He took a picture of the Manager - Bridge Maintenance with two (2) officials at the La Crescent (MN) bridge. Claimant forwarded the picture with the comment “keep your riff raff over there” to a co-worker. The Manager observed Claimant taking the picture without permission; he became aware of the comment the next day (May 12) and reported it to his supervisor. On the same date a CP official conducted an audit of Claimant’s CP-issued phone.

On May 16, 2022 the Carrier issued to Claimant a notice of formal investigation and hearing. It states, in part, as follows:

The purpose of the investigation and hearing is to develop all facts and circumstances and place your responsibility, if any, in connection with your alleged inappropriate and disrespectful behavior while on duty on Wednesday, May 11, 2022, taking and sending photos and inappropriate messages regarding CP Supervisors to a coworker. This was brought to the Company’s attention on Thursday, May 12, 2022. This indicates a possible violation of, but is not limited to, the following rules:

- **Workplace Harassment - Including Sexual Harassment Policy 1300**
- **US Rulebook for Engineering Employees 1.6 Conduct**
- **US Rulebook for Engineering Employees 1.15 Duty-Reporting or Absence**

By agreement of the parties the investigation and hearing convened May 26, 2022 with Claimant, assisted by his representative, testifying and examining the Carrier's witness (Manager - Bridge Maintenance) and seven (7) exhibits.

On June 7, 2022 the Assistant Chief Engineer - Structures notified Claimant "the hearing record contains substantial evidence and proof" that Claimant violated **US Rulebook for Engineering Employees 1.6 Conduct**.

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 twenty (20) calendar day suspension served without pay as a First (1st) Major - Life Threatening & Conduct Unbecoming Offense in accordance with the Hybrid Discipline & Accountability Guidelines (the "Guidelines").

Following the on-property exchange of documents and discussions, including conference, the parties remain at impasse. In accordance with the Agreement dated December 16, 2021 the dispute is before the Board for adjudication and decision.

FINDINGS:

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

Paragraph (H) in the Agreement sets forth the expedited procedure applied in this dispute and states, in relevant part, as follows:

The parties agree that their documentation will be distributed directly to the Neutral Member by the Carrier Member with a copy to the Employee Member, and such 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 oral argument; however, each party reserves the right to present oral argument by notifying the other party in correspondence during the on-property claims handling[.]

The Board applies the expedited framework in Paragraph (H) in rendering its findings and conclusions. To begin, the Board finds the Carrier afforded Claimant a fair and impartial hearing. Concerns or objections raised by the Organization were addressed by the hearing official without prejudice to Claimant.

The charging notice refers to multiple photos and multiple inappropriate comments. The Manager testified to “secret photos” taken by Claimant. The record shows that Claimant took one (1) picture, attached his comment “keep your riff raff over there” and shared it with a co-worker. The Manager witnessed Claimant snapping the “secret” photo without permission but did not respond at that time. The deciding official determined Claimant violated US Rulebook for Engineering Employees 1.6 Conduct (“Employees must not be: 7. Discourteous”) because taking the picture without the Manager’s permission and referring to him as “riff raff” shows a lack of consideration and rudeness.

The Board finds substantial evidence for the Carrier’s assessment of discipline to Claimant; however, the discipline assessed is unreasonable because the severity of the incident is not established by the Carrier. That is, the record established through the formal investigation and hearing provides insufficient probative evidence to reconcile the differing views of the picture and comment. That is, the Manager finds the picture and comment discourteous whereas the CP official auditing Claimant’s phone expressed no concerns to Claimant. Nevertheless, there is sufficient probative evidence that Claimant, while on duty and using a Carrier-issued phone, took the picture of officials without the Manager’s permission and referred to him as “riff raff”; this merits a corrective measure.

In the circumstances of this dispute, the Board exercises its authority to modify discipline assessed - - twenty (20) day unpaid suspension - - to a Formal Reprimand and made whole in a manner consistent with on-property practice.

In accordance with Paragraph (M) in the Agreement, the Carrier will comply with the Award within thirty (30) days from the date of its issuance.

AWARD:

Appeal sustained in accordance
with the findings.

/s/ Patrick Halter
Patrick Halter
Neutral Member
Dated: 18 Sept ‘23



Chris Clark
Carrier Member
Dated: September 29, 2023



John Schlismann
Employee Member
Dated: September 20, 2023