

**PUBLIC LAW BOARD NO. 7988**

**CASE NO. 18  
AWARD NO. 18**

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

**and**

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

**Claimant: D. Oelke  
System File No. D-33-22-585-01  
Carrier File No. 2022-00029907**

---

**BACKGROUND:**

Calendar year 2022 marks seven (7) years of service for Claimant D. Oelke with the Carrier - CP. In May 2022 Claimant was assigned to the P6 Utility Crew where he performed Special Machine Operator duties and reported directly to the crew's Manager.

On May 19, 2022 the Carrier issued to Claimant a notice of formal investigation/hearing which states, in part, as follows:

The purpose of this investigation/hearing is to develop all facts and circumstances and to place your responsibility, if any, in connection with you allegedly found sleeping while on duty in the Bensenville Yard and then displaying improper behavior towards your manager on May 18, 2022. This indicates a possible violation of, but is not limited to, the following rules:

- **US Rulebook for Engineering Employees 1.6 Conduct**
- **US Rulebook for Engineering Employees 1.11 Sleeping**

The Carrier issued another notice on May 19, 2022 informing Claimant that "you are formally being held out of service . . . until the facts of this circumstance can be determined through a hearing investigation."

By agreement of the parties the formal investigation/hearing convened May 24, 2022. Claimant, assisted by his representative, testified, presented a witness (System Foreman - P6 Utility Crew) and exhibit as well as examined the Carrier's witness (Manager - P6 Utility Crew) and four (4) exhibits.

On June 7, 2022 the Assistant Chief Engineer - St. Paul notified Claimant that “the hearing record contains substantial evidence and proof that you displayed improper behavior towards your manager in violation” of **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 (1<sup>st</sup>) Major - Life Threatening & Conduct Unbecoming Offence 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 this 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 Employee within the meaning of the Railway Labor Act, as amended; the 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. It states, in 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 even with the transcription of testimony by a certified reporter located offsite. Additionally, CP’s decision to withhold Claimant from service until determining facts of the alleged incident through formal investigation and hearing did not prejudice Claimant.

As for May 18, 2022 and the incident giving rise to this appeal, the charging notice cited possible violations of US Rulebook for Engineering Employees 1.6 Conduct and 1.11 Sleeping. The deciding official did not find a violation of 1.11 Sleeping. The Manager alleged observing Claimant reposed in a reclined position in the passenger seat; un rebutted testimony of the System

Foreman was that the seats in the truck do not recline. Claimant was upright in the seat and wearing clear safety glasses. Claimant's initial response to the Manager was moderate if not jocular; however, the exchange deteriorated when the Manager entered Claimant's personal space and physically touched him. The Manager acknowledged that his conduct towards Claimant could be interpreted as aggressive. This precipitated Claimant's response - - "don't fucking touch me" and "idiot" supervisor. Aggressive conduct aggravated Claimant's profane and negative response.

Given the peculiar circumstances in this dispute, the Board finds the discipline assessed to Claimant is punitive, not corrective. The discipline is rescinded with the Board issuing a make whole remedy for Claimant consistent with on-property practice. Notwithstanding the Board exercising its authority to rescind punitive discipline with grant remedial relief, this Award is not to be interpreted or relied upon as sanctioning or condoning profanity, disrespect or other unacceptable comment or conduct in the workplace.

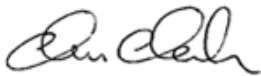
In accordance with Paragraph (M) in the Agreement, the Carrier will comply with this Award within thirty (30) calendar days from the date of its issuance.

**AWARD:**

Appeal sustained.

Make whole remedy 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