

**PUBLIC LAW BOARD NO. 7988**

**CASE NO. 19  
AWARD NO. 19**

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

**and**

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

**Claimant: A. Kadus  
System File No. D-19-22-510-01  
Carrier File No. 2022-00029558**

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**BACKGROUND:**

Calendar year 2022 marked eight (8) years of service for Claimant A. Kadus with the Carrier - CP. As of April 2022 Claimant had been serving as the Terminal Crew Foreman - Humboldt Yard for approximately eighteen (18) months. In that position Claimant reported directly to the Roadmaster - Minneapolis.

On April 18, 2022 the Carrier issued to Claimant a notice of formal investigation and hearing. It was amended on April 21, 2022. The amended notice states, in part, the following:

The purpose of this investigation/hearing is to develop the facts and circumstances and to place your responsibility, if any, in connection with your alleged failure to follow instructions given to you by your manager while on duty April 6, 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 1.13 Reporting and Complying with Instructions**

By agreement of the parties the investigation and hearing convened May 5, 2022. Claimant, assisted by his representative, testified and submitted two (2) exhibits as well as examined the Carrier's witness (Roadmaster - Minneapolis) and ten (10) exhibits.

On May 20, 2022 the Director Track & Structures - St. Paul notified Claimant of the outcome:

Upon a review of the transcript of the investigation it has been determined that the hearing record contains substantial evidence and proof that you violated the following rules:

➤ **US Rulebook for Engineering Employees 1.13 Reporting and Complying with Instructions**

Based on the facts and evidence in the hearing record, and your past discipline history, you are hereby issued discipline of **twenty (20) Demerits**.

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.

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**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 establishing the expedited procedure for this dispute 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 that the Carrier afforded Claimant a fair and impartial hearing. Concerns or objections raised by the Organization were addressed during the formal investigation and hearing in a manner not prejudicial to Claimant.

As for the incident giving rise to the appeal, the Roadmaster - Minneapolis instructed Claimant on April 6, 2022 to remove six (6) defects from the Digital Track Notebook (“DTN”); the crew installing rail replacements notified the Roadmaster the defects had been repaired and completed. The US Rulebook for Engineering Employees 1.13 - Reporting and Complying with Instructions directs employees to “comply with instructions from supervisors who have the proper

jurisdiction.” There is substantial evidence that Claimant violated this rule as there is no dispute that “proper jurisdiction” over Claimant resided with the Roadmaster and Claimant acknowledged the Roadmaster’s instruction to remove the defects but did not comply with it. The evidence shows that Claimant complied with the Roadmaster’s instruction on prior occasions to remove defects from the DTN based on second-hand, not eyewitness, confirmation of repairs. Claimant was not removing defects based on falsified information. Thus, complying with the Roadmaster’s instruction would not subject Claimant to penalties under 49 C.F.R. Part 213.

The imposition of discipline on Claimant for the rule violation is not an arbitrary or capricious decision nor is the discipline exposed as unreasonable or punitive. The discipline assessed will remain in place.

**AWARD:**

Appeal denied.

/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