

PUBLIC LAW BOARD NO. 7988

**CASE NO. 20
AWARD NO. 20**

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

and

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

**Claimant: R. Powell
System File No. D-04-22-435-01
Carrier File No. 2022-00028504**

BACKGROUND:

Calendar year 2022 marked eighteen (18) years of service for Claimant R. Powell with the Carrier - CP. For the past twelve (12) years Claimant has performed welding duties. On the incident date January 24, 2022 the Roadmaster observed Claimant's personal electronic device ("PED") light up in the welding truck during work hours. At the time of the Roadmaster's observation Claimant was in the cab of the truck.

On February 1, 2022 the Carrier issued to Claimant a notice of formal investigation and 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 your alleged violation of CP Electronic Devices Policy while on duty Monday, January 24, 2022. This indicates a possible violation of, but is not limited to, the following rules:

➤ **US Rule Book for Engineering Employees Rule 29.1 E.**

By mutual agreement of the parties the formal investigation and hearing convened March 2, 2022. Claimant, assisted by his representative, testified and examined the Carrier's witness (Roadmaster) and five (5) exhibits.

On March 16, 2022 the Assistant Chief Engineer - St. Paul notified Claimant "that the hearing record contains substantial evidence and proof that you 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 a **twenty (20) day unpaid suspension**.

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.

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 Employees 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 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 that the Carrier afforded Claimant a fair and impartial hearing even with the transcription of testimony by a certified reporter located offsite. Other concerns or objections raised by the Organization during this expedited process were addressed by the Carrier without prejudice to Claimant.

As for the dispute giving rise to this appeal, the Roadmaster observed Claimant's PED light up on the console of the welding truck during duty hours. An employee's PED in the on-position during work hours violates US Rule Book for Engineering Employees Rule 29.1.E *Electronic Devices - - Personal Electronic Devices* ("They must be turned off . . . and stored out of sight in a location not on their persons"). Claimant is rules qualified and acknowledged his PED was inadvertently and unintentionally in the "on" position. The Board reviewed the record and finds

substantial evidence that Claimant violated US Rule Book for Engineering Employees Rule 29.1 E as charged.

The Carrier assessed Claimant a 20-day unpaid suspension based on severity of the incident and past discipline. The CP response to the appeal recognizes the severity of the incident because the rule requiring the PED to be stored and turned off during work hours reinforces the railroad industry's and Federal Government's emphasis on no PED distractions during duty hours as a means to maintaining a safe work environment.

Claimant's past discipline is listed in the Carrier's response to the appeal: ten (10) demerits on February 14, 2019 for non-major infraction; ten (10) demerits on July 24, 2020 for no-major infraction; and fifteen (15) demerits on August 12, 2020 for non-major infraction. According to the BMW's appeal, the ten (10) demerits dated July 24, 2020 is "no longer considered active for the purposes of assessing discipline" under the *Process*. A party presenting this defense is responsible for completing it. The Board finds this defense is incomplete because the ten (10) demerits dated February 14, 2019 is "older" than the July 24, 2020 discipline but not contested or shown to be inactive by the Organization.

Also incomplete is the comparator employee receiving lesser discipline (Formal Reprimand) for the same infraction incurred by Claimant. The Board reviewed the disciplinary letters for the comparator employee and Claimant; the decision letter for the comparator employee recognized "your honesty and willingness to take responsibility demonstrated during the hearing" whereas Claimant's decision letter contains no such wording. Also Claimant testified that the only way he could have violated the rule is if he willfully and intentionally left his PED on but he inadvertently left it on so he did not violate the rule. The Board finds that Claimant and the comparator employee are not similarly-situated for purposes of discipline.

In the circumstances of this dispute the Board concludes that the Carrier's decision to assess discipline was not arbitrary or capricious and the discipline assessed is not punitive. The appeal will be denied.

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