

**PUBLIC LAW BOARD NO. 7988**

**CASE NO. 21  
AWARD NO. 21**

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

**and**

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

**Claimant: D. Giles  
System File No. D-09-22-380-02  
Carrier File No. 2022-00028885**

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**BACKGROUND:**

On May 4, 2020 Claimant D. Giles entered service with the Carrier - CP. In February 2022 he was assigned to Surf Crew 2 as the Tamper Operator. By text message to his supervisor on Monday February 21, 2022 Claimant requested vacation leave for Tuesday February 22, 2022 as he was unable to report for duty because his trailer had a flat tire. At the time of the request Claimant's supervisor was on vacation. Claimant did not report for duty on February 22, 2022.

On March 7, 2022 the Carrier issued to Claimant a notice of formal investigation and hearing. It states, in part, as follows:

The purpose of this investigation/hearing is to determine the facts and circumstances and to place your responsibility, if any, in connection with your alleged failure to report for duty at the designated start time and location on Tuesday February 22, 2022. This indicates a possible violation of, but is not limited to, the following rules:

➤ **US Rulebook for Engineering Employees 1.15 Duty-Reporting or Absence**

By mutual agreement of the parties the formal investigation and hearing convened April 6, 2022. Claimant, assisted by his representative, testified and submitted an exhibit as well as examined the Carrier's witness (Roadmaster) and nine (9) exhibits.

On April 19, 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, and your past discipline history, you are hereby issued discipline of **fifteen (15) 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 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. The transcription of testimony by a certified reporter located offsite was inconsequential to the formal investigation and hearing and outcome of this dispute.

As for the dispute giving rise to this appeal, there is substantial evidence that Claimant violated the charged rule because he did not report for duty on February 22, 2022 at the designated start time and location. Claimant was aware of the Carrier's expected protocol to follow when his supervisor was not available, that is, escalate his request for vacation leave to another official. The Carrier instructed Claimant on this expectation when he was not dressed and ready to report for duty at the designated start time and location on September 20, 2021 and October 27, 2021. Based on these prior incidents where Claimant reported late or not at all, Claimant knew the expected protocol to follow on Monday February 21 to obtain an excused absence to cover his not reporting on Tuesday February 22. Reporting for duty at the designated start time and location is fundamental to maintaining the employment relationship.

Given Claimant's violation of US Rulebook for Engineering Employees 1.15 – Duty-Reporting or Absence, the Carrier's decision to assess discipline is not arbitrary or capricious. In the circumstances of this dispute the assessed fifteen (15) demerits are corrective and not punitive. The discipline remains in place with the appeal denied.

**AWARD:**

Appeal denied.

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



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Chris Clark  
Carrier Member  
Dated: September 29, 2023



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John Schlismann  
Employee Member  
Dated: September 20, 2023