

**PUBLIC LAW BOARD NO. 7988**

**CASE NO. 4  
AWARD NO. 4**

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

**and**

**Soo Line Railroad Company**

**Claimant: M. Slocum  
System File No. D-74-20-435-02  
Carrier File No. 2021-00021055**

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**BACKGROUND:**

On November 5, 2020 the Carrier issued to Claimant M. Slocum a notice of formal investigation and hearing which stated, in part, as follows:

The purpose of this investigation/hearing is to develop the facts and circumstances and to place your responsibility, if any, in connection with you allegedly having your personal electronic device found and in the on position, sitting on the floor board of a company truck during regular work hours while on duty October 30, 2020. This indicates a possible violation of, but not limited to, the following rules:

- **GCOR 1.10 - Games, Reading or Other Media**
- **OTS 29.1.E - Electronic Devices**

On the agreed-upon date of January 12, 2021 the investigation/hearing convened. Claimant, with representation assistance, presented testimony and examined the Carrier's witness and six (6) exhibits.

On January 26, 2021 the Director Track & Structures - St. Paul determined that Claimant violated the rules as charged and assessed discipline of a twenty (20) day suspension served without pay “[b]ased on the facts and evidence in the hearing record, the severity of the incident, and your past discipline history.”

On March 16, 2021 the Organization filed an appeal; the Carrier denied the appeal on May 10, 2021. The dispute remains unresolved following conference on September 1, 2021. In accordance with the Agreement dated December 16, 2021 this matter is before the Board for review and decision.

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### **FINDINGS:**

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

Paragraph (H) in the Agreement states that the documentation comprising the record “will be limited to the notice of investigation, transcript of investigation, letter assessing discipline, and correspondence exchanged on-property, as applicable.” Additionally “[t]he 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 Neutral Member did not require additional oral or written evidence.

The well-established and recognized function of the Board in this appellate forum is to review the record which is the documentation itemized in Paragraph (H) of the Agreement. When the record presents substantial evidence in support of the Carrier’s decision, the discipline assessed remains undisturbed unless exposed as arbitrary, capricious, discriminatory, an abuse of discretion or punitive.

The responsibility to establish facts supporting the charged rules violations and show that the discipline assessed is appropriate resides with the Carrier. The Board finds the record is not developed on pertinent facts and circumstances which are dispositive for the Carrier’s assessment of discipline. An undeveloped record undermines the Carrier’s obligation to afford Claimant a fair and impartial hearing where he can present his view and understanding of the charged rules and incident for the Carrier’s consideration prior to assessing any discipline. Developing a record encompasses facts and circumstances that may support or be adverse to either party.

There is no evidence in the record to support the Carrier's decision that Claimant violated GCOR 1.10 - Games, Reading or Other Media because there was no testimony addressing that rule and linking it to Claimant's conduct on October 30, 2020. Notwithstanding no evidence in the record proffering facts relevant to the charged rule violation, the deciding official concluded that the "facts and evidence in the hearing record" prove Claimant violated the rule. This conclusion is arbitrary and capricious, the decision to assess discipline is an abuse of discretion that renders the 20-day suspension harsh and punitive rather than corrective by design.

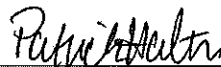
Given these findings the Board will sustain the appeal and, in doing so, grant the requested remedy set forth in the Organization's appeal. That is, Claimant's - -

. . . discipline shall be set aside, all notations of the twenty (20) day suspension be expunged from all Carrier records, including Claimant's personnel record, and Claimant shall be made whole for any loss he may experience as a result of this assessment of discipline.

**AWARD:**

Appeal sustained.

The Carrier is ordered to make the Award effective on or before 30 days following the date of the Award.



Patrick Halter  
Neutral Referee

Dated: 8.11.2022



Erica Barnard  
Carrier Member

Dated: August 11, 2022



John Schlismann  
Employee Member

Dated: August 11, 2022