

**PUBLIC LAW BOARD NO. 7988**

**CASE NO. 5  
AWARD NO. 5**

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

**and**

**Soo Line Railroad Company**

**Claimant: M. Halbach  
System File No. D-82-20-435-03  
Carrier File No. 2021-00021056**

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**BACKGROUND:**

On December 16, 2020 the Carrier issued to Claimant M. Halbach a notice of formal investigation and hearing which stated, 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 you allegedly having your personal cell phone in the on position during regular working hours while on duty December 11, 2020. This indicates a possible violation of, but not limited to, the following rules:

- **GCOR 2.21 Electronic Devices, Sub Part B**
- **System Special Instructions NO 3, Section 3**

On the agreed-upon date January 13, 2021 the investigation/hearing convened. Claimant, with representation assistance, presented testimony and examined the Carrier's witness and four (4) exhibits.

On January 26, 2021 the Director Tracks & Structures - St. Paul notified Claimant of his rules violations as charged:

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 twenty (20) day suspension with ten (10) days deferred and ten (10) days served without pay.

On March 16, 2021 the Organization filed an appeal; the Carrier denied the appeal on May 10, 2021. The dispute remains following conference on September 1, 2021. In accordance with the Agreement dated December 16, 2021 this dispute 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 Employee 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.

As stipulated in Paragraph (H) of the Agreement, the record in this proceeding "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 Board's role and function is to review the record. The scope of that review is set forth in Third Division Award No. 21299 as quoted by the Carrier in its response to the appeal:

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

In this discipline case the Carrier's responsibility is to present substantial evidence that establishes facts supporting the charged rules violations and show that the assessed discipline is appropriate. Substantial evidence is defined In Second Division Award No. 7492 "as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Substantial evidence resides at the base of the evidence pyramid, an unexceptional threshold compared to preponderance of the evidence, clear and convincing evidence or beyond a reasonable doubt.


The US Rulebook for Engineering Employees Rule 1.3.1 - Rules, Regulations and Instructions states that an employee "must have a copy of, be familiar with, and comply with all safety rules issued in a separate book or in another form." Safety rules in GCOR apply to Claimant; GCOR was updated with Special Instructions No. 3 adding the phrase "[p]ersonal electronic devices are prohibited and must be turned off" to GCOR 2.21, Subpart B. Claimant acknowledged that he understood the safety rule that his personal cell phone must be in the off position during regular work hours as the Roadmaster met with him and co-workers on December 10, 2020 to discuss it. The next day -- incident date December 11 -- Claimant placed his cell phone in his lunch container and left it in the truck; he did not verify it was in the off position. When Claimant retrieved it for the Roadmaster, his phone was in the on position. This constitutes substantial evidence of the charged rules violations.

In developing the record the Carrier provided Claimant with notice of the charged rules and incident under investigation, afforded Claimant his right to due process with the hearing officer conducting a fair and impartial hearing prior to the deciding official rendering a decision. Under the Hybrid Discipline and Accountability Guidelines this incident is a "Major Rule Violation" subject to a range of penalties ("Depending on the offence the issuance of a minimum 20 day suspension up to and including a 45-day suspension and/or dismissal.") The Carrier's assessment of a twenty (20) day suspension with ten (10) days deferred and ten (10) days served without pay is appropriate in the circumstances of this dispute.

Since the Carrier's decision is not arbitrary, capricious, discriminatory or an abuse of its discretion and the assessed discipline is appropriate, the Board will deny this appeal.

**AWARD:**

Appeal denied.

  
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Patrick Halter  
Neutral Referee  
Dated: 8/11/2022



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Erica Barnard  
Carrier Member  
Dated: August 11, 2022



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John Schlismann  
Employee Member  
Dated: August 11, 2022