

PUBLIC LAW BOARD NO. 7988

**CASE NO. 9
AWARD NO. 9**

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

and

Soo Line Railroad Company

**Claimant: G. Williams
System File No. D-22-21-445-15
Carrier File No. 2021-00023149**

BACKGROUND:

On March 8, 2021 the Carrier issued to Claimant G. Williams 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 RWP violation written by the FRA in regards with your alleged failure to properly provide track protection for yourself while on duty March 3, 2021. This indicates a possible violation of, but not limited to, the following rules:

- **US Rulebook for Engineering Employees 21.0 OTS Procedures**
- **US Rulebook for Engineering Employees 21.2 OTS for Controlled Tracks**

On the agreed-upon date April 13, 2021 the investigation/hearing convened. Claimant, with representation assistance, presented testimony and examined the Carrier's witness and five (5) exhibits.

On April 28, 2021 the Assistant Chief Engineer - St. Paul notified Claimant that he violated the charged rules.

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) calendar days unpaid suspension.

On June 25, 2021 the Organization filed an appeal; the Carrier denied the appeal on August 23, 2021. The dispute remains unresolved following conference on September 1, 2021. In accordance with the Agreement dated December 16, 2021 the dispute is before the Board for review and decision.

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.

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 required the complete text of the Hybrid Discipline & Accountability Guidelines (the *Process*).

The well-established and recognized function of the Board in this appellate forum is to review the record. The scope of the Board's review is recited in Third Division Award No. 21299 as presented in the Carrier's 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 dispute, the Carrier's responsibility is to present substantial evidence that (1) establishes facts supporting the charged rule violation and (2) shows that the discipline assessed is appropriate for the infraction. Substantial evidence is positioned at the base of the evidence tier compared to preponderance of the evidence, clear and convincing evidence or beyond a reasonable doubt.

Claimant acknowledged to the FRA Inspector that he was not following the rules because he was walking on the track without protection. Applying Third Division Award No. 28484 ("[w]here, as here, there is an admission of guilt, there is no need for further proof"), Claimant's acknowledgement is substantial evidence that he violated the US Rulebook for Engineering Employees 21.0 OTS Procedures ("OTS must be provided at all times to those employees who may occupy or foul a controlled track or non-controlled track to perform maintenance, inspection or repair") and US Rulebook for Engineering Employees 21.2 OTS for Controlled Tracks ("Before occupying or fouling a controlled track, protection or warning must be established").

In developing the record the Carrier provided Claimant with notice of the charged rules and a description of incident under investigation, afforded Claimant his right to due process with a fair and impartial hearing prior to rendering a decision to assess discipline. There is substantial evidence supporting the Carrier's assessment of a twenty (20) calendar days suspension is appropriate based on the *Process* where Claimant's infractions are a "Major Rule Violation" (numbers 8, 9 and 12) and a 20-day suspension is the minimum sanction.

Since the Claimant was afforded due process and a fair and impartial hearing and the Carrier's actions and decision are not arbitrary, capricious, discriminatory or an abuse of its discretion but supported by substantial evidence establishing the rules violated and appropriate discipline, the Board will deny this appeal.

AWARD:

Appeal denied.



Patrick Halter
Neutral Referee

Dated: 8/11/2022



Erica Barnard

Carrier Member

Dated: August 11, 2022



John Schlismann

Employee Member

Dated: August 11, 2022