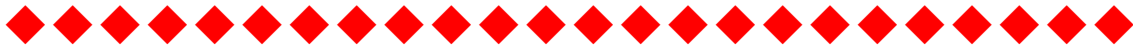


◆◆◆◆ **NARCOA** ◆◆◆◆

JUDICIAL COMMITTEE POLICY



VERSION 1.2 ◆ Dec 20, 2016

North American Railcar Operators Association, Inc.

INDEX

<u>Section #</u>		<u>Page</u>
Section I	INCIDENTS	1
Section II	INCIDENT REPORTS	2
Section III	JUDICIAL COMMITTEE RESPONSIBILITY IN REVIEWING INCIDENT REPORTS	2
Section IV	MISCONDUCT	2
Section V	MISCONDUCT REPORT	3
Section VI	JUDICIAL COMMITTEE RESPONSIBILITY IN REVIEWING MISCONDUCT REPORTS	3
Section VII	RULEBOOK VIOLATIONS	3
Section VIII	APPEAL PROCESS	4
Section IX	POINT SYSTEM	4
Section X	PENALTIES FOR INCIDENTS, MISCONDUCT, RULEBOOK VIOLATIONS BY NARCOA MEMBERS IN ADDITION TO THOSE IN PRECEDING SECTIONS	5

JUDICIAL COMMITTEE POLICY

I. INCIDENTS

1. Definitions
 - a. An incident is defined as any event and/or occurrence involving one or more NARCOA members that results in personal injury and/or property damage to a third party, host railroad or NARCOA member. All incidents must be reported as outlined in Article II. Incidents are classified as non-chargeable, partially chargeable, and wholly chargeable. It is the responsibility of the Judicial Committee to determine whether an incident is wholly chargeable, partially chargeable, or non-chargeable, as outlined in Articles III and IX.
 1. A NON-CHARGEABLE INCIDENT is an incident where the operator is clearly not at fault nor responsible in any manner for the incident. Therefore, it must be shown that no responsible action on the part of the operator would have prevented such an incident.
 2. A PARTIALLY CHARGEABLE INCIDENT is an incident in which the operator is partially negligent, partially responsible, or partially at fault for the incident. The operator would have contributed to the incident by not doing everything reasonably possible to prevent the incident. Therefore, the operator and other party/parties, if any, share the responsibility for the incident.
 3. A WHOLLY CHARGEABLE INCIDENT is an incident in which the operator is solely negligent, solely responsible, or solely at fault for the incident.
2. Unless there are extenuating circumstances the following operator failures should constitute adequate grounds for ruling an incident partially or wholly chargeable. (Note: The listed failures may not be totally inclusive):
 - a. Failure to adjust speed to conditions of light, weather, rail or traffic.
 - b. Failure to recognize and adjust to the operators own temporary physical, mental and emotional condition.
 - c. Failure to observe conditions at rear of motorcar while backing.
 - d. Failure to yield right of way at grade crossings.
 - e. Failure to control speed so as to be unable to stop with an assured cleared distance ahead.
 - f. Failure to observe NARCOA operating rules or special instructions.
 - g. Failure to observe safe practices taught in NARCOA training programs or supervisory bulletins.

II. INCIDENT REPORTS

1. Excursion Coordinators are required to write incident reports. Reports should include names, dates, conditions, witnesses, and other pertinent information.
2. The Excursion Coordinator will send the completed report to the NARCOA Insurance Administrator within 30 days of the date of the incident. The NARCOA Insurance Administrator will file the report with the Insurance Carrier as specified by the Insurance Policy.
3. The NARCOA Insurance Administrator will furnish a copy of the report to the Judicial Committee Chair for possible action. (NOTE: Unless extenuating circumstances exist, as determined by the Judicial Committee on a case by case basis, failure of the Excursion Coordinator to file a timely detailed report can result in Judicial Committee recommended sanctions to the NARCOA Board of Directors per Article VIII.)

III. JUDICIAL COMMITTEE RESPONSIBILITY IN REVIEWING INCIDENT REPORTS

1. The Judicial Committee Chair will contact the Excursion Coordinator for further review if the Chair believes that the incident report requires clarification or that pertinent information has not been reported.
2. The Judicial Committee Chair will contact the Operators involved in the incident for further review if the Chair believes that any operator statements furnished as part of the incident report require clarification, or that any pertinent operator information has not been reported.
3. If the Judicial Committee Chair believes an Operator is at fault, the Chair will notify the Operator in writing that an investigation is being made by the Judicial Committee, and will contact witnesses for further information (NOTE: The chair may subrogate the preliminary "at fault" determination to the whole Judicial Committee, in which case Operator notification would occur after the Judicial Committee makes the preliminary "at fault" determination.)
4. After information is gathered the whole Judicial Committee will preliminarily determine if an incident is Non-Chargeable, Partially Chargeable, or Wholly Chargeable. If the incident is Partially or Wholly Chargeable, points will be assessed in accordance with Article VIII, and a recommendation will be made to the NARCOA Board of Directors for disciplinary action. (NOTE: Unless extenuating circumstances exist that require additional Judicial Committee time for evaluating the incident, the Judicial Committee recommendation shall be made within 60 days of the Judicial Committee Chair's receipt of the incident report from the Insurance Administrator.) Any actual disciplinary action taken will be by the Board of Directors and not by the Judicial Committee.
5. The Operator involved (and other NARCOA member(s) involved, if any, in Partially Chargeable incidents) will be notified in writing of the recommendation made by the Judicial Committee to the NARCOA Board of Directors.
6. The Operator involved (and other NARCOA member(s) involved, if any, in Partially Chargeable incidents) has the right to appeal the Judicial Committee recommendation to the NARCOA Board of Directors at the annual NARCOA membership meeting.
7. The Operations Chair shall notify the member involved of the final disciplinary action.

IV. MISCONDUCT

1. Misconduct is defined as any act by a Member that violates the integrity of NARCOA.

V. MISCONDUCT REPORT

1. A misconduct report can be initiated ("Initial Report") by any person, whether or not a NARCOA member. The Initial Report should include names, dates, circumstances, witnesses, and other pertinent information. The Initial Report shall be sent to the Chair of the Judicial Committee with a copy of the report sent to the Area Director where the incident allegedly occurred.
2. Within 30 days of receipt of the Initial Report, the responsible Director shall send the Initial Report and the Director's Report to the Judicial Committee Chair.

VI. JUDICIAL COMMITTEE RESPONSIBILITY IN REVIEWING MISCONDUCT REPORTS

1. If the Judicial Committee Chair believes there is enough evidence for an investigation the Member shall be notified in writing that an investigation is being made and that witnesses will be contacted for further information. (NOTE: The chair may subrogate the decision for investigation to the whole Judicial Committee, in which case Operator notification would occur after the committee makes the determination that an investigation is being made.)
2. After information is gathered the Judicial Committee will preliminarily determine if misconduct has occurred and to what extent, and will recommend disciplinary action to the NARCOA Board of Directors. (NOTE: Unless extenuating circumstances exist that require additional time to make a preliminary determination and recommendation, the committee recommendation shall be made within 60 days of the Judicial Committee Chair's receipt of the Director's Report.)
3. The Judicial Committee Chair will notify the Member in writing of the preliminary determination of the Judicial Committee, and the Chair will forward this preliminary determination, as well as any recommended disciplinary action, to the NARCOA Board of Directors. Any actual disciplinary action taken will be by the Board of Directors and not by the Judicial Committee.
4. The Member has the right to appeal the Judicial Committee preliminary determination to the NARCOA Board of Directors at the annual membership meeting.
5. The Operations Chair shall notify the member involved of the final disciplinary action.

VII. RULEBOOK VIOLATIONS

1. The report of any violation(s) of the then effective NARCOA rulebook originates with the Excursion Coordinator who shall send a report of the rulebook violation(s) to the Judicial Committee Chair.
2. The Judicial Committee Chair will contact the person cited, indicating the nature of the reported violation and gathering any pertinent information that this person may present in his/her defense. The person cited will be informed that the citation will be presented to the Judicial Committee for review and recommendation of possible sanction to the NARCOA Board of Directors.
3. The Judicial Committee will determine the severity of the violation(s) and make a preliminary determination whether or not a point assessment is merited. This preliminary determination will be presented to the NARCOA Board of Directors for possible action.
4. Actual disciplinary action will be by the Board of Directors and not by the Judicial Committee.
5. The cited Member has the right to appeal the Judicial Committee recommendation to the NARCOA Board of Directors at the annual membership meeting.

VIII. APPEAL PROCESS

All appeals of NARCOA Judicial actions shall be directed to the area director. The appellant's attendance is desired but not required at the Board of Directors meeting. The process will be as follows:

1. Appellant to be brought in and seated.
2. Read a statement of activity that lead to the Judicial Committee / Board of Directors action and subsequent decision.
3. Statement and discussion of basis for appeal.
4. Appellant be asked to step out side.
5. Board of Directors and Judicial Committee discuss appeal.
6. Board of Directors vote to allow in full or partial the appeal or deny the appeal.
7. Appellant be invited back in to hear decision.
8. Case closed, case not to be discussed outside the board room.

IX. POINT SYSTEM

1. Incidents
 - a. Physical damage to vehicle or object:
 - 1) Minor contact, negligible damage: 1 pt.
(Note: If the Judicial Committee believes that repair of the total physical damage incurred in the incident would not exceed \$50.00, the committee may elect at its discretion not to assess 1 point.)
 - 2) Damage to one or more vehicles, but not disabling vehicles from operating safely: 3 pts.
 - 3) Disabled vehicle: 5 pts.
 - b. Personal injury:
 - 1) Injury of a minor nature: 1 pt.
 - 2) Injury requiring a doctor, or emergency room treatment: 5 pts.
 - 3) Injury requiring hospitalization greater than 24 hours: 8 pts.
 - 4) Catastrophic personal injury: 10 pts.
 - c. The Judicial Committee will determine whether an incident is Non-Chargeable, Partially Chargeable, or Wholly Chargeable, or as defined in Article I. A Non-Chargeable incident will result in no points being assessed. A Partially Chargeable incident will result in points being divided between the operator and the other party/parties, if any, based on share of responsibility for the incident. A Wholly Chargeable incident will result in assessment of points to the solely responsible operator. Consideration should be given to the operator of a motorcar rendering assistance by towing or pushing a disabled motor car if that operator was determined to have not contributed to any incident that occurs during that process.
2. Delinquent filing of incident, rulebook violation, or misconduct reports by Excursion Coordinator
 - a. Reports are considered late if not submitted within 30 days.
 - b. If known that a report is late 2 weeks: Judicial Committee Chair shall warn Excursion Coordinator that failure to submit report within two weeks of the warning shall result in Judicial Committee recommendation(s) to the NARCOA Board of Directors for sanction(s) as indicated in para. c. through e.
 - c. If report is late 4 weeks: 3 points.
 - d. If report is late 8 weeks: Removal of Excursion Coordinator's name from list of Certified Excursion Coordinators for a period of one year.
 - e. If report is late 12 weeks or more: Removal of Excursion Coordinator's name from list of Certified Excursion Coordinators for a period of two years.
 - f. If supplemental information report, when/if requested by the Judicial Committee Chair after receipt of Excursion Coordinator's initial report, is not answered within 2 weeks of Chair's request: 3 points.
3. Delinquent filing of statements requested during a Judicial Committee investigation will result in the following points assessments:
 - a. If report late 4 weeks – 3 points.
 - b. If report late 8 weeks – 6 points.
 - c. If report not received within 12 weeks – 1 year suspension
4. Point accumulation. Points are totaled over a 36 month period.

**X. PENALTIES FOR INCIDENTS, MISCONDUCT, RULEBOOK VIOLATIONS
BY NARCOA MEMBERS IN ADDITION TO THOSE IN PRECEDING SECTIONS**

1. Any fatality resulting from an Operator’s negligence, whether such negligence is partially or wholly chargeable according to Section I: NARCOA privileges (including insurance coverage) will be removed for 36 months from date of Board action.
2. Eleven points or more accumulated: NARCOA privileges (including insurance coverage) will be removed for 12 months from date of last Board action. After 1 year from the date of last Board action, 11 points will be removed from the operators total points assessed.
3. Any combination of 3 chargeable incidents, misconduct or rulebook violations over a 36 month period, regardless of point total: NARCOA privileges (including insurance coverage) will be removed for 12 months from date of last Board action. These three incidents can be any combination of Partially Chargeable or Wholly Chargeable incidents.
4. Any Operator found guilty of using track without proper permission: NARCOA privileges (including insurance coverage) will be removed for 12 months from date of Board action. Second offense will result in NARCOA privileges (including insurance coverage) being removed for 60 months from date of last Board action.
5. Any Operator found guilty of malicious damage to property, or theft from another Member or Host Railroad: NARCOA privileges (including insurance coverage) will be removed for 12 months from date Board action. Second offense will result in NARCOA privileges (including insurance coverage) being removed for 60 months from date of last Board action.
6. Any operator found guilty of violation of NARCOA rule 4.03, ‘Alcohol and Drugs’ or Rule 4.04, ‘Weapons’ on railroad property: NARCOA privileges (including insurance coverage) will be removed for 12 months from date of board action. Second conviction will result in NARCOA privileges (including insurance coverage) being removed for 60 months from date of last board action.
7. Any penalty over 12 months is subject to review by the Board of Directors after 12 months if so petitioned by the Member.
8. Definition of removal of NARCOA privileges: A Member loses the right to attend or participate in any NARCOA function.
9. Rulebook violation(s):

Non-moving rule book violations:	1 Point
Moving rule book violations:	2 Points
Electronic Devices Rule Violations:	5 points
10. Penalties for misconduct not otherwise defined:
 - a) Non Willful Misconduct: 0-3 Points
A “willful” act is one done intentionally, as distinguished from an act done carelessly or inadvertently
 - b) Willful Misconduct without Malice: 3-6 Points.
“Malice”- malevolence: the quality of threatening evil
 - c) Willful misconduct with Malice: 6-12 Points.
 - d) Certified excursion coordinators, directors, committee chairs and committee members will be held to a higher standard and assessed additional points accordingly.
 - e) NARCOA members disregarding Insulation/Shunting Rule 1.02 by means of deliberately installing motorcar (OTE) wheel shunts or other shunting devices which intentionally activate grade crossing signals and/or gates is prohibited. Members disobeying Insulation/Shunting Rule 1.02 will be viewed as Misconduct.
11. When disciplinary action results in the removal of a member’s privileges, the Operations Chair will notify all Excursion Coordinators and the NARCOA Webmaster of the member’s loss of privileges.