

BEFORE PUBLIC LAW BOARD NO. 7386

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
SOUTH KANSAS AND OKLAHOMA RAILROAD**

Case No. 12

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Mr. B. Peck for alleged failure to properly inspect and apply appropriate remedial action as a track inspector on February 18, 2015 on the Tulsa Subdivision in accordance with FRA standards was arbitrary, capricious, excessive and in violation of the Agreement (System File 2422-SF13S1-157 SKO).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Peck shall be afforded the full remedy prescribed in Rule 15D of the Agreement."

FINDINGS:

By notice dated February 26, 2015, the Claimant was directed to attend a formal investigation on charges that the Claimant allegedly had failed to perform safely on February 18, 2015, while inspecting track and performing related duties on the Tulsa Subdivision by failing to properly identify an out of service track geometry condition at the point of derailment. The investigation was conducted, as scheduled, on March 6, 2015. By letter dated March 11, 2015, the Claimant was informed that as a result of the investigation, he had been found guilty as charged, and that he was being dismissed from the Carrier's service. The Organization subsequently filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial credible evidence supports the finding that the Claimant violated the cited

rules, because the Claimant was afforded all elements of due process, because the Claimant was afforded a fair and impartial investigation, and because the discipline imposed was not arbitrary, capricious, or an abuse of managerial discretion. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to timely provide a notice of hearing to the Claimant, because the Carrier failed to sustain its burden of proof, and because the Carrier's decision to dismiss the Claimant was arbitrary, capricious, and excessive.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find that the Carrier failed to comply with Article 17 when it issued the Notice of Hearing to the Claimant. Article 17, entitled "Discipline," states, in part:

The MW Team Member will be notified in writing of the charge against him within ten (10) calendar days of the occurrence on which discipline is to be based or knowledge of the incident is received by the Carrier Officer who is in a position to file charges under this Article.

The record reveals that there was a derailment on February 18, 2015, and that the Claimant had inspected the track in the area on February 13, 2015. The Carrier made the determination on February 18, 2015, that the Claimant's actions on February 13, 2015, had been wrongful and a Notice of Investigation was sent by certified mail to the Claimant on February 27, 2015. The important part here is that the Claimant did not receive the notice until March 2, 2015. As stated above, Article 17 requires that the Claimant be notified in writing on the charge against him within ten calendar days of the

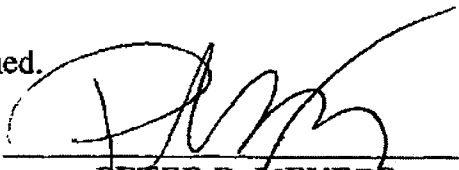
occurrence on which the discipline is to be based or the knowledge of the incident is received by the Carrier officer. In this case, the Carrier officer had knowledge on February 18 and did not notify the Claimant until twelve days later. The Carrier's action violated Article 17, and, on that basis, this claim must be sustained.

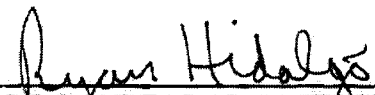
It should also be pointed out that after a thorough review of the evidence in this case, this Board also finds that the Carrier failed to meet its burden of proof that the Claimant did anything wrong on February 13, 2015. There is simply insufficient proof that the Claimant's measuring of the track condition was done wrongfully five days before the derailment. There were many possible intervening factors that could have occurred and, in fact, the derailment itself could have had an impact on the measurement that was taken on February 18, 2015. Consequently, in addition to the procedural violations here, there is simply insufficient proof that the Claimant violated any safety rule in this case.

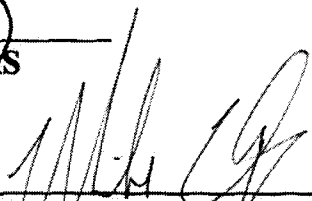
For all the above reasons, this claim must be sustained.

AWARD:

The claim is sustained.


PETER R. MEYERS
 Neutral Member


ORGANIZATION MEMBER
DATED: November 14, 2016


CARRIER MEMBER
DATED: November 14, 2016