

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way)
Employees Division - IBT)
Rail Conference)
)
and)
)
)
)
SOO Line Railroad Company (CP))

Case No. 100
Award No. 100
System File No. D-60-18-510-03

Background

On July 25, 2018, the Carrier issued to Claimant A. Kadus a notice of formal investigation and hearing which stated, in part, as follows:

"The purpose of the investigation and hearing is to develop all the facts and place responsibility, if any, in connection when you allegedly became confrontational and insubordinate to your manager on July 16th, 2018. This indicates a possible violation of, but is not limited to, the following rules:

- GCOR 1.6 - Conduct
- GCOR 1.7 - Alterations"

On the mutually agreed-to date of September 7, 2018, the investigation and hearing convened wherein Claimant and his representative presented testimony and examined the Carrier's two (2) witnesses and three (3) exhibits.

On September 27, 2018, the Assistant Chief Engineer - St. Paul issued to Claimant a decision letter stating that the record of the proceeding established the rules violations as charged. CP assessed Claimant discipline of five (5) days without pay "[b]ased on the facts and evidence in the hearing record, the severity of the incident, and [Claimant's] past discipline history."

On October 1, 2018, the Organization and the Carrier agreed to progress Claimant's discipline dispute for resolution before this Board using the abbreviated procedure in Paragraph (K) of the PLB Agreement.

Findings

Public Law Board No. 7544, 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.

Consistent with the PLB Agreement for this Board, the evidentiary record in this proceeding is comprised of the following: (A) notice of investigation, (B) transcript of investigation and all related exhibits, (C) discipline assessment letter and (D) on-property correspondence related to progression of the claim.

At the outset of the hearing the Organization objected to the court reporter located off-site to transcribe the hearing by telephone. This arrangement, BMWWE asserts, can result in an incomplete and inaccurate record detrimental to Claimant. The Organization requested the reporter's physical presence. The presiding official proceeded with the hearing without ruling on the objection. Notwithstanding the objection, the Board finds the transcript of the proceeding sufficient for rendering a decision.

Two (2) hours prior to the end of the workday on July 16, 2018 the Production Manager conducted a job briefing with the sixteen (16) member utility crew about the tasks and assignments to be performed for the cutover the next day on the mainline and siding extensions. The crew's Acting Foreman is Claimant. There was a back-and-forth discussion between the Manager and crew about the tasks and assignments. Although the crew expressed concerns about micro-management, the Manager succeeded in redirecting the discussion such that the crew's pushback subsided. Claimant, however, continued to interrupt the Manager - - "we don't fucking need to do this, we know what we're doing, we don't need to be treated like children, this is fucking stupid, who is telling you to do this?"

The Manager attempted to defuse the situation by offering to meet later with Claimant to discuss his concerns but Claimant persisted in a raised voice with the crew present. To control the situation the Manager directed Claimant to leave the property and return to the hotel. The Carrier states Claimant violated Rule 1.6 - Conduct because he was insubordinate (refused to acknowledge the Manager's explanations), quarrelsome (persistent questioning of the Manager's plans) and discourteous (raised voice with attitude towards the Manager). The Carrier states that Claimant's raised voice and relentless interruptions directed at the Manager created an altercation in violation of Rule 1.7 - Altercations ("[e]mployees must not enter into altercation with each other[.]") Present during the job briefing and confirming Claimant's statements and raised voice was the Project Manager.

Claimant denies swearing, denies uttering the comment about being treated as children, denies raising his voice and denies that the Manager offered to meet with him to discuss his concerns. Claimant states he has experience completing cutovers whereas the Manager does not; the Manager ignored Claimant's comments which were no different than the other members' comments yet Claimant was singled out and removed from the property. Although irritated, Claimant states he retained his composure throughout the job briefing.

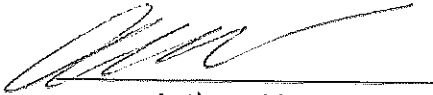
The Board credits Claimant's testimony for what it represents whereas the Board credits the Production Manager's testimony and Project Manager's testimony for what it proves. On that basis, the Board finds there is substantial evidence in the record supporting the charged rules violations by Claimant. The penalty assessed is proportional to the infractions and corrective in design. Since the Carrier did not engage in an arbitrary act or abuse its discretion in assessing the penalty, the claim will be denied.

Award

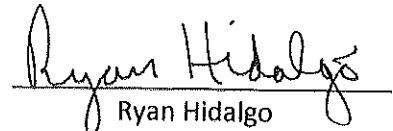
Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 14th day of
May, 2019