

PUBLIC LAW BOARD NO. 7544

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| Brotherhood of Maintenance of Way |) | |
| Employees Division - IBT Rail |) | |
| Conference |) | |
| |) | |
| and |) | Case No. 101 |
| |) | Award No. 101 |
| |) | System File No. D-21-19-445-08 |
| |) | |
| SOO Line Railroad Company (CP) |) | |

Background

On April 8, 2019, the Carrier issued to Claimant N. Lorsung a notice of formal investigation and hearing which stated, in part, as follows:

The purpose of this investigation is to develop the facts and circumstances and to place your responsibility, if any, in connection with your alleged involvement in failing to follow instructions from your manager to properly repair a known track defect that was ultimately found as the cause of a derailment. This indicates a possible violation of, but is not limited to, the following rules:

- GCOR 1.1.1 - Maintaining a Safe Course
- GCOR 1.4 - Carrying Out Rules and Reporting Violations
- GCOR 1.13 - Reporting and Complying With Instructions
- GCOR 1.6 – Conduct Item #6 - Negligent
- OTS 26.1.1 - Protection Against Defects
- CP Redbook of Track 15.4.0 - Protection Against Defects
- CP Redbook of Track 7.6.5 - Shims

On the agreed-to date April 24, 2019, the formal investigation and hearing convened wherein Claimant and his representative presented testimony and one (1) exhibit and examined the Carrier's two (2) witnesses and seven (7) exhibits.

On May 7, 2019, the Director Track - St. Paul notified Claimant that the "hearing record contains substantial evidence and proof that you violated" the charged rules and " [b]ased 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) days actual time served."

During conference the parties agreed to extend the ninety (90) day time limit for claim progression to the Board.

This discipline dispute is presented to the Board pursuant to the abbreviated procedure in Paragraph (K) of the PLB Agreement dated April 4, 2012.

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.

Paragraph (K)(1) in the PLB Agreement stipulates that the documentation comprising the evidentiary record in this proceeding is (A) the 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. The parties agreed to forego (D), that is, there is no on-property correspondence related to the appeal and response to the appeal.

Paragraph (K)(2) in the PLB Agreement states:

In deciding the disposition of this dispute, the Neutral will consider: (a) Applicability of any time limit or procedural provisions; (b) whether sufficient evidence was adduced at the investigation and during on property handling; and (c) whether the quantum of discipline assessed was appropriate.

Since applicability of any time limit or procedural provision is not present in this claim, the Board finds that Claimant was afforded due process with a fair and impartial hearing.

Evidence adduced at the investigation shows that on Friday - March 22, 2019 a CP Track Inspector identified two (2) defects - - wide gauge at CT01 outbound and two (2) inch cross-level elevation at switch R3 - - and notified the Roadmaster whereupon the Roadmaster determined the defects required immediate repair. Claimant repaired the wide gauge that day (Friday) and the Roadmaster agreed that Claimant would repair the cross level on Saturday - March 23, 2019.

During a telephone discussion with Claimant at approximately 0900 hours on Saturday - March 23, the Roadmaster instructed Claimant to repair the cross level that day by shimming up to an inch to remove the curse out of the tracks. The Assistant Chief Engineer was present with the Roadmaster at the time of instructions issued to Claimant and confirms that the Roadmaster instructed Claimant to reduce the 2-inch cross level elevation by starting to shim at the joint and tapering from there. Claimant did not interpret the Roadmaster's instruction as an order; he did not shim the cross level; he tightened the rail fasteners and downed high and missing spikes. The Roadmaster was aware of tightened fasteners but was not aware that the 2-inch cross level remained. The cross-level elevation was not reported by Claimant to any official. On April 2 a derailment occurred with the wheel flange on the low joint which was the reverse elevation at the cross level. Between March 23 and April 2, the cross level elevation increased from 2 to 2 - 5/8 inches.

The Board finds substantial evidence in the record that the Roadmaster instructed Claimant to repair the cross level on Saturday - March 23 but Claimant did not repair it and left it unprotected which led to the derailment. The evidence aligns with the charged rules violations. The quantum of discipline assessed is

appropriate as it is not arbitrary or capricious, discriminatory nor an abuse of discretion. This claim will be denied.

Award

Claim denied.

Patrick Halter /s/
Patrick Halter
Neutral Member



Justin Dittrich-Bigley
Carrier Member



John Schlismann
Organization Member

Dated on this 9th day of
December, 2021