

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way)	
Employees Division - IBT Rail)	
Conference)	
)	
and)	Case No. 102
)	Award No. 102
)	System File No. D-22-19-510-01
)	Carrier File No. 2020-00012611
)	
SOO Line Railroad Company (CP))	

Background

On April 9, 2019, the Carrier issued to Claimant D. Hofbauer 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 tour of duty on April 5th, 2019 and your alleged behavior and failure to follow direction as given to you by your manager in regards to you working the weekend of April 6th, 2019. This indicates a possible violation of, but is not limited to, the following rules:

- **GCOR 1.6 - Conduct (Insubordinate and Quarrelsome)**
- **GCOR 1.13 - Reporting and Complying With Instructions**

On the agreed-to date May 1, 2019, the formal investigation and hearing convened wherein Claimant and his representative presented testimony and examined the Carrier's witness and four (4) exhibits.

On May 16, 2019, the Assistant Chief Engineer - 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 served without pay."

Thereafter a conference convened where the Carrier and Organization agreed to extend the time limits for progressing this claim.

On February 5, 2020, the Organization presented an appeal stating the Carrier acted in an arbitrary and capricious manner when it determined Claimant violated rules and that exposes the assessed discipline as excessive and punitive. A make whole remedy is requested along with expungement of this matter from Claimant's record.

On March 30, 2020, the Carrier responded to the appeal wherein it denied the claim stating there was substantial evidence supporting the rules violations and the discipline assessed was reasonable.

This claim is before 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.

In accordance with Paragraph (K)(1) in the PLB Agreement, the evidentiary record in this proceeding is comprised of the notice of investigation, transcript of investigation and all related exhibits, discipline assessment letter and on-property correspondence related to progression of the claim.

Paragraph (K)(2) states:

Disposition of the dispute will be based upon documentation referenced in paragraph (1), above. 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.

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

Evidence adduced at the formal investigation and hearing and during on-property handling shows Claimant's scheduled hours on Friday - April 5, 2019 were 0630 to 1500. During morning conference call, the Roadmaster solicited volunteers for April 6 (Saturday) and April 7 (Sunday) to inspect track for wide gauge. Later in the day the Roadmaster indicated that all crew members were to report for weekend duty. Claimant informed the Roadmaster that he had personal business to deal with on Saturday and childcare responsibilities on Sunday, thus, he would not report for the "bullshit" track inspection and would undergo an investigation should CP penalize him. There was some discussion about Claimant reporting on either day for partial hours. Regardless, Claimant remained adamant he would not report for the "bullshit" weekend work notwithstanding the Roadmaster's instruction to do so.

At 1500 hours on the 5th the Director - Track met with all crews and directed them to report that weekend for track inspection using the Portable Track Loading Fixture and to ensure safe freight transport. After issuing his directive, the Director and Roadmaster met with Claimant whereupon Claimant stated his reasons, previously disclosed to the Roadmaster, why he would not be present for the "bullshit" work. The Director remained steadfast with his directive. When Claimant completed his workday on April 5, he knew about the directive to report for duty April 6 and April 7. Claimant did not report on either date.

The record contains substantial evidence that Claimant did not comply with the Roadmaster's instruction and the Director's directive to report for weekend duty. Failure to comply with a work

directive is excused only when the directive is illegal, compliance places the employee in imminent danger of harm or any other basis recognized in the railroad industry. None of those are present in this claim. Rather, the labor relations principle work now, grieve later applies to Claimant such that his not reporting for weekend work violated GCOR 1.13 - Reporting and Complying with Instructions and GCOR 1.6 - Conduct (Insubordinate and Quarrelsome).

As for whether the quantum of discipline assessed was appropriate, Claimant's record shows a 5-day suspension (July 6, 2017) and a 10-day suspension (March 2, 2018). This incident in April 2019 marks Claimant's third infraction in less than two (2) years. Any discussion for Claimant to report either day was not recognized by Claimant. Given the evidentiary record establishing serious offenses as charged, the quantum of discipline assessed was appropriate. The Board will deny the claim.

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