

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way)	
Employees Division - IBT Rail)	
Conference)	
)	
and)	Case No. 103
)	Award No. 103
)	System File No. D-70-19-445-44
)	Carrier File No. 2020-00012933
)	
SOO Line Railroad Company (CP))	

Background

On November 22, 2019, the Senior Manager - Track and Structures issued to Claimant W. McKnight a notice of formal investigation and hearing to be held on December 4, 2019, for the following purpose:

The purpose of the investigation and hearing is to develop the facts and place your responsibility, if any, in connection with your alleged failure to perform a required roll by inspection of a passing train on Thursday, November 21, 2019. This indicates a possible violation of, but is not limited to, the following rules:

➤ **GCOR 6.29 - Inspecting Trains**

On December 2, 2019, the Senior Manager notified Claimant as follows:

The investigation previously scheduled for Wednesday, December 4, 2019 has now been postponed until Wednesday, December 18, 2019[.]

On December 12, 2019, the Assistant Chief Engineer - Chicago notified Claimant that the Senior Manager "had been removed" as charging officer and would be a witness at the hearing.

The formal investigation and hearing convened on December 18, 2019. The Claimant and his BMWED representative presented testimony and two (2) exhibits and examined the Carrier's two (2) witnesses and eight (8) exhibits.

On December 30, 2019, the Assistant Chief Engineer - Chicago notified Claimant that "the hearing record contains substantial evidence and proof that you violated" GCOR 6.29 - Inspecting Trains 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 a formal reprimand" and "are required to serve sixteen (16) days without pay from your previous deferred suspension."

On February 25, 2020, the Organization presented an appeal stating the Carrier violated Claimant's right to due process when it did not hold the hearing within twenty (20) days of the incident, rendered an arbitrary and capricious decision and assessed excessive discipline. A make whole remedy is requested which includes expunging this matter from Claimant's record.

On April 24, 2020, the Carrier denied the appeal stating Claimant received a fair and impartial hearing, there was substantial evidence supporting the charged rule violation and the discipline assessed was justified.

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 Employee 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.

As stipulated in Paragraph (K)(1) of the PLB Agreement, documentation comprising the evidentiary record in this proceeding is 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:

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.

Applicability of a time limit and procedural provision is present as the BMWED states the Carrier did not comply with Rule 18(b) in the Schedule of Rules Agreement when the hearing was not held within twenty (20) days of the incident date.

Rule 18(b) states:

(b) The hearing will be held within twenty (20) days of the date of the occurrence or within twenty (20) days from the date information is obtained by the appropriate officer of the Company (excluding company security forces) and the decision shall be rendered within fifteen (15) days from the date the hearing is completed.

Based on the notice of hearing dated November 22, 2019, the “date of the occurrence” was November 21, 2019; holding a hearing “within twenty (20) days of the date of the occurrence” requires holding a hearing no later than December 11, 2019. According to the Organization, setting the hearing date within the 20-day window is the Carrier’s prerogative with no requirement to involve the BMWED.

As for holding a hearing on a date beyond the 20-day window, Schedule 18(b) does not authorize either party, by itself, to widen the window because Schedule 18(b) is a contract requirement subject to altering only by the parties’ mutual agreement. In this regard, documentation in the record shows an established practice spanning more than a decade and involving numerous CP officials where the parties mutually agreed in writing to hold a hearing beyond the 20-day window. As explained herein, this practice was not executed in this claim.

By notice dated December 2, 2019, the CP rescheduled the hearing from December 4 to December 18 which is a date beyond the 20-day window. The Carrier issued its December 2 notice without discussion or agreement between the parties. The CP contacted the Organization on December 4 and the BMWED agreed “to make it work” by rearranging its schedule; however, the Carrier did not disclose that the December 18 hearing date was beyond the 20-day window. Given this fact pattern the Board finds that the Organization did not abandon, forfeit or waive the time limit under Schedule 18(b) imposing the requirement to hold a hearing within the 20-day window. The Organization presented its time limit objection at the hearing; the presiding official denied it and proceeded to hold the hearing.

The Board finds that the CP held the hearing on December 18 which was twenty-eight (28) days after the “date of the occurrence” (November 21) and beyond the 20-day time limit imposed by Schedule 18(b). The Carrier’s decision to hold the hearing on December 18 constitutes an abuse of discretion since the window closed on December 11 pursuant to the time limit in Schedule 18(b) and there was no mutual agreement to proceed beyond the 20-day time limit. On that basis, the claim will be sustained.

Award

Claim sustained.

Patrick Halter /s/
Patrick Halter
Neutral Member



Justin Dittrich-Bigley
Carrier Member



John Schlismann
Organization Member

Dated on this 9th day of
December, 2021