

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way)	
Employees Division - IBT Rail)	
Conference)	
)	
and)	Case No. 104
)	Award No. 104
)	System File No. D-01-20-380-01
)	
SOO Line Railroad Company (CP))	

Background

On January 8, 2020, the Carrier issued to Claimant J. Nelson a notice of formal investigation and hearing which stated, in part, as follows:

The purpose of this investigation/hearing is to develop the facts and circumstances and to place your responsibility, if any, in connection with you allegedly leaving your assignment prior to end of shift without proper authority on January 7, 2020. This indicates a possible violation of, but is not limited to, the following rules:

- US Rulebook for Engineering Employees 1.6 - Conduct
- US Rulebook for Engineering Employees 1.15 - Duty-Reporting Absence

On the agreed-to date January 23, 2020, the formal investigation and hearing convened wherein Claimant and his representative presented testimony and examined the Carrier's witness and five (5) exhibits.

On February 5, 2020, 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) demerits."

The Organization and CP agreed to advance this dispute using 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.

Paragraph (K)(1) in the PLB Agreement stipulates that the documentation comprising the record in this proceeding consists of (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) 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.

Applicable time limit or procedural provisions are not present in the record before the Board, thus, there are no impediments to adjudicating the merits of the claim.

Evidence adduced at the formal investigation and hearing is captured in the Carrier's decision which states "the hearing record contains substantial evidence" that Claimant violated the following rules:

US Rulebook for Engineering Employees 1.6 - Conduct
US Rulebook for Engineering Employees 1.15 - Duty-Reporting Absence

The Board reviewed the record and finds no evidence that Claimant violated Rule 1.6 - Conduct. The rule, itself, is not in the record of the proceedings and the Carrier's witness offered no testimony on the rule. Given the absence of evidence - - no documentation of the rule and no testimony from any official with knowledge of the situation wherein the rule arises in this claim - - the deciding official's conclusion that "the hearing record contains substantial evidence and proof that [Claimant] violated [Rule 1.6]" is an arbitrary and capricious decision.

As for Rule 1.15 - Duty-Reporting Absence, it states:

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. *Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority.* Continued failure by employees to protect their employment will be cause for dismissal.

[Emphasis added.]

On January 7, 2020, Claimant was the assistant foreman on a St. Paul section crew repairing a main crossing into Battle Creek with work hours 0630 to 1500. He reported at 0634 hours but was not dressed and ready for work; the Roadmaster failed him and anticipated Claimant would report to the section crew. Claimant left the engineering office at 0730 hours but did not report to the section crew. Without informing the Roadmaster, Claimant drove his personal vehicle to Hastings seeking a foreman position

on the night crew at that location. Claimant abandoned his assignment with the St. Paul section crew without proper authority including the Roadmaster's agreement to a date releasing Claimant from his assignment with the St. Paul section crew prior to assignment with the Hastings night crew. The Board finds substantial evidence that Claimant acted without proper authority in violation of Rule 1.15 - Duty-Reporting Absence.

The quantum of discipline assessed to Claimant -- twenty (20) demerits -- is not appropriate because it was based on two (2) rules violations of which one was premised on an arbitrary and capricious decision constituting an abuse of discretion and rendering the discipline inappropriate. The Board's authority to mitigate discipline is well-established with legions of awards in all divisions under the National Railroad Adjustment Board. The Board exercises its authority in this claim to assess discipline appropriate for the Rule 1.15 violation -- ten (10) demerits.

Award

Claimant is assessed discipline
of ten (10) demerits.

Patrick Halter /s/
Patrick Halter
Neutral Member



Justin Dittrich-Bigley
Carrier Member



John Schlismann
Organization Member

Dated on this 9th day of
December, 2021