

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way)	
Employes Division - IBT Rail)	
Conference)	
)	
and)	Case No. 11
)	Award No. 11
)	System File: D-28b-14-390-11
SOO Line Railroad Company (CP))	

Background

On June 18, 2014, the Carrier issued to Claimant E. Gates a notice of formal investigation for the purpose of developing all facts and circumstances and placing responsibility, if any, in connection with:

- Your alleged on track collision between a ballast regulator (Unit #7211-27) and a Mark IV tamper (Unit #7206-19) at Barker Road, MP 100.47, Main #1 Watertown Subdivision.
- The date of the alleged event was Tuesday, June 17, 2014.

On July 2, 2014, the formal investigative hearing convened wherein Claimant and his representative cross-examined Carrier witnesses and presented testimony and evidence.

On July 17, 2014, the Regional Chief Engineer issued a discipline assessment letter to Claimant stating as follows:

“Testimony presented in the investigation/hearing indicates that you were in violation of Engineering Safety Rules and Recommended Practices Rule E-26; Riding Track Units Wear seatbelt while operating or riding in track unit/mobile work equipment, if equipped with them, unless it is in work mode and traveling less than 2 mph’ and OTS Rule 23.4; Stopping Distance and Maintaining Safe Braking Distance.

Therefore, in consideration of the investigation findings, you are assessed a Ten (10) day actual working day suspension[.]”

On September 25, 2014, the Organization and Carrier agreed to progress [Claimant’s] discipline dispute [D-28b-14-390-11] for resolution before PLB #7544 utilizing the abbreviated procedure provided for in Paragraph (K) of said PLB Agreement.

Findings

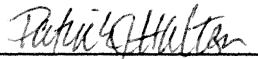
Public Law Board No. 7544, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Pursuant to Paragraph (K) in the PLB Agreement, the evidentiary record in this proceeding is comprised of the following: (i) notice of investigation, (ii) transcript of the investigative hearing and all related exhibits, (iii) discipline assessment letter, and (iv) on-property correspondence related to progression of the claim. Within this evidentiary framework defined by the parties, the Board renders these findings.

On the incident date of June 14, 2014, Claimant possessed thirty-six (36) years of service with the Carrier. On that date Claimant performed duties as a tamper operator; he acknowledged not wearing his seatbelt on the tamper that day. Claimant's acknowledgement constitutes substantial evidence that he violated Engineering Safety Rules and Recommended Practices Rule E-26 Riding Track Units as he was not wearing the seatbelt "while operating or riding in track unit/mobile work equipment." As for OTS Rule 23.4, Stopping Distance and Maintaining Safe Braking Distance, the Board finds the testimony is inconclusive whether Claimant violated this rule as charged. In view of the Board's findings on the charged rules violations, the ten (10) day actual suspension is lessened to a five (5) day actual suspension.

Award

Claim sustained in accordance with the findings.



Patrick J. Halter
Neutral Member

Dated on this 11th day of
February, 2014