

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way)
Employes Division (IBT Rail)
Conference) - Burlington)
System Division)
)
and)
)
)
)
SOO Line Railroad Company (CP))

Case No. 12
Award No. 12
System File: D-50-13-510-01

Background

On July 25, 2013, the Carrier issued to Claimant A. Green a notice of formal investigation stating, in part, as follows:

... the purpose of [the investigation is] ascertaining the facts and determining responsibility, if any, in connection with an incident that took place on July 15, 2013 on the Paynesville Sub, where allegedly you were insubordinate and did not comply with instructions when asked to do work pertaining to your position on P2 Tie crew.

The above referenced incident indicates a possible violation of GCOR 1.6 Conduct; 1.9 Respect of Railroad Company; and 1.13 Reporting and Complying with instructions.

On May 23, 2014, the formal investigative hearing convened wherein Claimant and his representative cross-examined Carrier witnesses and presented testimony and evidence.

On June 4, 2014, the Region Chief Engineer issued a discipline assessment letter to Claimant stating that a review of the transcript substantiated the charged rules violations. Based on your prior personal record, and the results of the hearing, it has been determined that discipline of thirty (30) consecutive days be assessed for the rules violations.

On September 25, 2014, the Organization and Carrier agreed to progress [Claimant's] discipline dispute [D-50-13-510-01] 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 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.

There is substantial evidence to support the charged rules violations levied against Claimant. On July 15, 2014, Claimant's duties involved operating a material truck for the P2 Tie Crew. The Roadmaster, Claimant's supervisor, instructed Claimant at the morning job briefing to install crossing ties; Claimant did not install the ties as instructed. Claimant failed to satisfactorily explain his whereabouts or identify the work he performed between 0825 hours and 1200 hours (noon) and 1200 hours to 1400 hours on the incident date. Claimant's assertion he hauled a second load of scrap a distance of eight (8) miles and that haul consumed over three and a half (3.5) hours is not credited. After locating Claimant, the Roadmaster observed him with his eyes closed in the Carrier's material truck. Although Claimant possessed a Carrier radio and cell phone, at no time did he contact the Roadmaster during the workday although he had been instructed to do so. Claimant's actions and conduct violate GCOR 1.6 (Conduct), GCOR 1.9 (Respect of Railroad Company) and GCOR 1.13 (Reporting and Complying with Instructions).

In view of the Board findings, the discipline assessed by the Carrier to Claimant is not arbitrary, harsh or excessive for proven rules violations. Therefore, the claim is denied.

Award

Claim denied.



Patrick J. Halter
Neutral Member

Dated on this 11th day of
January, 2016