

**PUBLIC LAW BOARD NO. 7544**

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

**Case No. 13**  
**Award No. 13**  
**System File: D-45-14-445-08**

Background

On October 15, 2014, the Carrier issued to Claimant R. Niles a notice of formal investigation "for the purpose of developing all facts and circumstances and placing responsibility, if any, in connection with:

- Your alleged falsification of federally regulated documents and late defect corrections.
- The date the alleged incident was on September 29 and October 6, 2014."

On October 21, 2014, the formal investigative hearing convened wherein Claimant and his representative cross-examined Carrier witnesses and presented testimony and evidence.

On November 4, 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 General Code of Operating Rules 1.6 - Conduct; GCOR 1.3 - Rules; Red Book of Track Requirements - Requirements.

Therefore, in consideration of the investigation findings, you are [assessed] a thirty (30) day record suspension with time served being held out of service. You will report back to duty on November 5, 2014. In addition you will not be able to bid/work any foreman position for two (2) years starting October 13, 2014 until October 13, 2016.

On January 14, 2015, the Organization and Carrier agreed that Claimant's dispute in claim D-45-14-445-08 would be progressed 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)(1) in the PLB Agreement, the evidentiary record in this proceeding is comprised of the notice of investigation, transcript of the investigative hearing and all related exhibits, discipline assessment letter and on-property correspondence related to progression of the claim.

Paragraph (K)(2) states that the Neutral Member, in deciding the disposition of the claim, "will consider: (a) Applicability of any time limit or procedural provisions; (b) Whether sufficient evidence was adduced at investigation and during on property handling; and (c) Whether the quantum of discipline assessed was appropriate."

Addressing, first, procedural provisions, the Organization's assertion that the Carrier's withholding Claimant from service pending investigation constitutes pre-determination of guilt is not established in the circumstances of this claim. Claimant received a fair and impartial hearing. In this regard, evidence adduced at the hearing relates to two (2) incidents dated September 29, 2014 and October 6, 2014. On those dates, the Carrier asserts Claimant entered false information in the digital track notebook (DTN) showing that he corrected defects when he had not corrected them.

With respect to the incident date of October 6, the Track Inspector identified the asset as "crossover" at milepost 176.94 with defect details noted as "A4 - Loose, worn, or defective connecting rod fastener" and defect comments were "176.94 bolts NR 4<sup>th</sup> rod loose marked by ribbon." The practice is to remove the ribbon when the defect is corrected which had to be accomplished during a thirty (30) day period that concluded on October 3. There is only one crossover in Portage junction located on the east end; it was marked with a ribbon. Claimant corrected an M&P switch which was not at the crossover and was not marked with a ribbon. Claimant entered information in the DTN that he corrected the loose rods at the crossover on October 6 but when the Roadmaster walked the track on October 10 he saw the ribbon on the loose rods; October 6 exceeds the 30-day window for correction. Claimant did not inform the Roadmaster that he did not make the repairs within the 30-day window or protect the track.

As for the incident date of September 29 the Track Inspector identified the asset as "switch west Portage yard track 2-turn" with defect details noted as "defect MP 4.35" and defect comments were "wide gauge closure rail marked by ribbon, ties defective, low joint SR west of joint." Claimant corrected a high end switch on the east end of the yard; the Roadmaster confirmed that the switch had been corrected. The Claimant did not correct the wide gauge identified in the DTN but he entered information that he had corrected it to 56-3/4 inches. When the Roadmaster viewed the defect on October 10 the ribbon remained in place and the wide gauge was approximately 58 inches, too wide under Federal specifications. Track is removed from service when gauge is 58 inches and not corrected.

These findings are substantial evidence that Claimant did not correct the defects that he recorded in the DTN as having corrected on September 29 and October 6. Furthermore, his testimony as to defects being mislabeled and \ or corrections performed and completed by members of a maintenance crew is unpersuasive. Claimant's failure to correct the defects which had been marked with ribbons by the

Track Inspector and accurately identified in the DTN or to ensure that others corrected them as he testified to constitutes violations of GCOR 1.6 - Conduct (indifference to duties by entering incorrect information as to defects corrected), GCOR 1.3 - Rules (know and comply with the rules) and the Red Book of Track Requirements - Requirements (FRA regulations § 213, Subpart A).

In the circumstances of this claim, the thirty (30) day record suspension with time served being held out of service and the 2-year restriction of foreman seniority is the appropriate quantum of discipline for the proven rules violations.

Award

Claim denied.



Patrick J. Halter  
Neutral Member

Dated on this 11<sup>th</sup> day of  
January, 2016