

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. 15
Award No. 15
System File: D-52b-14-390-23

Background

On November 10, 2014, the Carrier issued to Claimant L. Radsek a notice of formal investigation stating, in part, as follows:

... the purpose [of the formal investigation is] ascertaining the facts and determining responsibility, if any, in connection with an alleged incident that took place on Friday, October 31, 2014, related to your alleged failure to secure ties as instructed and leaving a potentially unsafe condition.

The purpose of the formal investigation will be to discover whether or not any rules or policies were violated.

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

On December 17, 2014, the Assistant Chief Engineer issued a discipline assessment letter to Claimant that states:

Testimony presented in the investigation/hearing indicates that you were in violation of General Code of Operating Rules 1.13 - Reporting and Complying with Instructions and GCOR 1.1.1 - Maintaining a Safe Course.

Therefore, in consideration of the investigation findings, you are hereby assessed a thirty (30) day actual working day suspension[.]

On February 4, 2015, the Organization and Carrier agreed to progress Claimant's discipline dispute [D-52b-14-390-23] ... 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 this 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."

The evidence adduced at the investigative hearing relates to the incident date occurring in the afternoon hours on Friday, October 31, 2014. Specifically, whether the maintenance foreman and Claimant, an assistant maintenance foreman, raised or "tamped" hanging ties as directed by their supervisor, the Roadmaster. The hanging ties were located immediately adjacent to three (3) ties newly-installed by Claimant and the foreman on Friday morning. Atop the new ties was a rail joint. On Saturday (November 1, 2014) the dispatcher informed the Roadmaster that the rail joint was fractured. The Carrier asserts that the Claimant's and foreman's failure to tamp the hanging ties resulted in too little support for the track which contributed to the rail joint split.

There is substantial evidence in support of the Carrier's assertion. The Track Inspector confirmed the picture he snapped shortly before Friday noon showing the hanging ties next to the new cross-ties. The Inspector testified he was "absolutely certain" that the picture taken by another employee on Saturday morning showing the hanging ties adjacent to the new ties underneath the fractured rail joint depicted the same location as in his picture. At the hearing Claimant stated the pictures depicted different locations; however, Claimant did not dispute the location in the pictures when the Roadmaster showed them to him on Monday (November 3, 2014).

Claimant further testified that he and the foreman worked in an area west of the newly-installed ties but they disagreed as to that area. The foreman stated the area was twenty (20) to twenty-five (25) feet west of the new ties whereas Claimant asserted it was well-beyond the foreman's stated area. Aside from this discrepancy about the work area, the foreman identified in the picture the newly-installed ties which were underneath the fractured rail joint and adjacent to the hanging ties. Despite the foreman's testimony that they tamped the hanging ties, spikes are pictured on the ground and uplifted from the rail. Notwithstanding any asserted vague instructions from the Roadmaster, Claimant and the foreman acknowledged that tamping the hanging ties is the standard operating practice. Even if the Claimant's testimony is credited that the area where he and the foreman tamped hanging ties was west of the new-tie installation area, the pictures show hanging ties extending westward from the new ties. In short, the evidentiary record supports the finding that Claimant and the foreman did not tamp the hanging ties adjacent to the new ties. This resulted in too little support for the track - - a potentially unsafe condition - - and contributed to the rail joint fracturing.

As the hanging ties were not tamped by Claimant as instructed by the Roadmaster, Claimant violated General Code of Operating Rules 1.13 - Reporting and Complying with Instructions and GCOR 1.1.1 - Maintaining a Safe Course. In the circumstances of this claim, the thirty (30) day actual working day suspension is the appropriate quantum of discipline for the proven rules violations.

Award

Claim denied.



Patrick J. Halter
Neutral Member

Dated on this 11th day of
January, 2016