

PUBLIC LAW BOARD NO. 7544

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

Case No. 16
Award No. 16
System File No. D-16-15-390-23

Background

On March 25, 2015 the Carrier issued to Claimant S. Mecum a notice of formal investigation stating, in part, as follows:

"The purpose of this investigation/hearing is to determine the facts and circumstances and to place responsibility, if any, in connection with:

- Your travelling beyond your Track Limits assigned under Track and Time near Milepost 197.8 on the Tomah Subdivision on March 24, 2015.
- Alleged Violation of GCOR Rule 10.3 Track and Time, OTS 21.0 On Track Safety Procedures, OTS 21.1 On Track Safety for Controlled Tracks."

On April 10, 2015 the formal investigation/hearing convened wherein Claimant and his representative were afforded the opportunity to present testimony and other evidence as well as cross-examine the Carrier's witness and inspect the documentary evidence.

On April 15, 2015 the Director Track 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 10.3 - Track and Time, OTS 21.0 On Track Safety Procedures, OTS 21.1 On Track Safety for Controlled Tracks.

Therefore, in consideration of the investigation findings, you are assessed a Ten (10) day suspension with time already being served from being held out of service."

On April 30, 2015 the Organization and the Carrier agreed to progress Claimant's discipline dispute for resolution before this Board "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.

Consistent with the PLB Agreement for this Board, 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, the Board renders these findings.

On March 24, 2015 Claimant, a Track Inspector, conducted a M&P regulatory inspection and main line special inspection. While inspecting the switch in the frog, Claimant contacted the dispatcher for more track and time. Upon making that request, Claimant recognized he had exceeded his track-and-time limits as he was beyond the switch at Kilbourne East by approximately twenty (20) feet towards Kilbourne West. Claimant immediately reversed course, released his track protection and sat off his vehicle as he contacted the Roadmaster by telephone and informed him of this matter. Thereafter the Roadmaster met with Claimant at Kilbourne East and directed Claimant to a drug and alcohol test. The next day the Carrier notified Claimant he was held out of service.

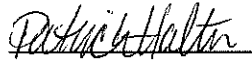
The Organization asserts the Carrier did not afford Claimant a fair and impartial hearing. In this regard, Claimant acknowledged his error to the Roadmaster so there was no need for the investigative hearing or to subject Claimant to a drug and alcohol test nor was there any basis for holding Claimant out of service. According to the Organization, Claimant has been subjected to disparate treatment because supervisors commit the same violation and are not (i) subjected to drug and alcohol testing, (ii) withheld from service or (iii) penalized with discipline.

Having reviewed the evidence, the Board finds that the Carrier afforded Claimant a fair and impartial hearing and there is insufficient evidence for the Organization's assertion of disparate treatment. The Board also finds that Claimant exceeded his authorized Track and Time limits on March 24, 2015 in violation of General Code of Rule 10.3, Track and Time (authority within specified limits), On Track Safety Procedures 21.0 (on track safety must be provided at all times when an employee is inspecting) and On Track Safety for Controlled Tracked 21.1 (controlled track protection must be established before fouling the track). The charged rules violations are established by substantial evidence.

Notwithstanding these violations, Claimant does not have prior Track and Time violations during his eleven (11) years of service. Testimony from the Roadmaster confirmed that Claimant is an exemplary employee in all aspects of employment. Claimant performed his duties, diligently reported exceeding track and time limits and immediately remedied his error. In the circumstances of this claim, the ten (10) day suspension is punitive and a one (1) day suspension -- with time already served from being held out of service -- is corrective.

Award

Ten (10) day suspension reduced to a one (1) day suspension
with time already served from being held out of service.



Patrick Halter
Neutral Member

Dated on this 28th day of
November, 2016