

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way)	
Employees Division - IBT)	
Rail Conference)	
)	
and)	Case No. 17
)	Award No. 17
)	System File D-19a-15-390-25
)	System File D-19b-15-390-26
)	
SOO Line Railroad Company (CP))	

Background

On April 10, 2015 the Carrier issued a notice of formal investigation and hearing to Claimant P. Anderson and Claimant A. Havercamp as follows:

"The purpose of the investigation and hearing is to develop all facts and circumstances and place responsibility, if any, for your alleged involvement in connection with an on-track collision that took place between a BTMF truck and an anchor machine on April 9, 2015. This indicates a possible violation of, but is not limited to, the following rules:

OTS RULE 23.4 Stopping Distance and Maintaining Safe Braking Distance
OTS RULE 29.7 Responsibilities of Maintenance Machine Operators"

On April 20, 2015 the investigation and hearing convened wherein Claimants and their representative were afforded the opportunity to present testimony and other evidence and examine the Carrier's witnesses and twelve (12) exhibits.

On April 29, 2015 the Senior Track Manager issued to each Claimant a discipline assessment letter stating that "[f]ull consideration has been given to the investigation/hearing" addressing the "alleged incident that took place on April 9, 2015 related to your alleged involvement in connection with an on-track collision that took place between a BTMF truck and an anchor machine."

The Senior Track Manager assessed a ten (10) day actual working day suspension to Claimant Anderson for violating OTS Rule 29.7 and Claimant Havercamp received, for violating OTS Rules 23.4 and 29.7, a thirty (30) day actual working day suspension.

On April 30, 2015 the Organization and the Carrier agreed to progress Claimant Anderson's discipline dispute and Claimant Havercamp'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) notices of investigation, (ii) transcript of the investigation and all related exhibits, (iii) discipline assessment letters, and (iv) on-property correspondence related to progression of the claims.

On April 9, 2015 Claimants Anderson and Haverkamp were members of a crew transporting equipment from Wyndmere (MN) to Hankinson (ND) at approximately 0840 hours. The radio-equipped BTMF truck, operated by Claimant Anderson, was the lead vehicle followed by the anchor machine, operated by Claimant Haverkamp, which was not radio equipped. As Claimant Anderson drove the BTMF truck on the main line past the operator of the regulator machine positioned on the siding track, that operator radio contacted Anderson stating there was something dragging under the truck. Claimant Anderson activated the truck's rear warning lights and stopped it on the rail. Claimant Haverkamp, operating the anchor machine behind Claimant Anderson's truck, recognized the warning lights at a distance of three hundred (300) feet and deployed the brakes at approximately two-hundred seventy (270) feet; the anchor machine did not reach a complete stop and collided into the rear of the truck. Manager McConnell determined that the collision caused "two minor dents in the bumper" of the BTMF truck.

After transporting Claimants for drug and alcohol testing, Manager McConnell returned to the collision site and drove the anchor machine at full speed as a means to conduct a stopping distance brake test. Full speed was unknown as the machine does not have a speedometer; however, the stopping distance was three hundred ninety-four (394) feet; McConnell did not know the speed Claimant Haverkamp was traveling when he applied the brakes and Claimant Haverkamp estimated ten (10) miles per hour. McConnell also checked the anchor machine's daily inspection book for the entry and date of the last brake test. The required, annual brake test was delinquent by five (5) years and there were no entries in the inspection manual for three (3) years.

The Organization asserts that the Carrier did not afford Claimants a fair and impartial hearing and pre-determined their culpability because it subjected them to drug and alcohol testing and withheld them from service prior to the investigative hearing. Having reviewed the record, the finding is that Claimants received a fair and impartial hearing. Subjecting Claimants to testing and withholding them from service following an on-track collision does not reflect a pre-determination of their culpability.

As for the charged rules violations levied against each Claimant, the record shows that Claimant Anderson conducted a walk-around inspection of the BTMF truck but did not record data or information about the vehicle's condition in the daily safety inspection book ("green book") because that book was not in the truck. Claimant Anderson did not notify Manager McConnell that the green book was missing or unavailable at any time. Claimant Anderson's failure to notify Manager McConnell that the green book was not in the truck and not documenting the walk-around inspection in any manner violates OTS 29.7, Responsibilities of Maintenance Machine Operators. The discipline assessed is based on substantial evidence and affirmed.

As for Claimant Havercamp, the record shows that he conducted a walk-around inspection of the anchor machine but did not record it or the running brake test in the daily safety inspection book ("yellow book") because he was "out of the habit" of recording the inspection and brake test. Indicative of Claimant Havercamp being "out of the habit" is that he operated the anchor machine on three (3) occasions during the week prior to the collision and did not record those inspections. Also, he did not report that the operator's manual showed the anchor machine as five (5) years delinquent for the brake test and no recorded inspections for three (3) years. OTS Rule 23.4 stipulates a safe following distance as 500 feet; Claimant was 300 feet and less than 300 feet when he deployed the brakes. There is substantial evidence that Claimant violated the rules as charged and corrective discipline is warranted. Claimant Havercamp's suspension remains undisturbed.

Award

Claims denied.


Patrick Halter
Neutral Member

Dated on this 28th day of
November, 2016