

PUBLIC LAW BOARD NO. 7544

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

Case No. 20
Award No. 20
System File D-12a-15-390-16

Background

On February 20, 2015 the Carrier issued to Claimant R. Heald a notice of formal investigation and hearing which states, in part, the following:

"This will serve as your notification to attend a formal investigation/hearing to be conducted in the Portage Depot located at 400 West Oneida Street, Portage, WI on Thursday, March 5, 2015 at 10:00 for the purpose of developing all facts and circumstances and placing responsibility, if any, in connection with:

- Your alleged involvement in the lining of a mainline switch without authority, failure to secure a mainline switch, and falsification of a Track Inspection Report while working on the East Rio Storage Track on the Watertown Subdivision.
- The date of the alleged event was on Friday, February 6, 2015."

On March 5, 2015 the formal investigation and hearing convened wherein Claimant and his representative were afforded the opportunity to present testimony and other evidence and cross-examine the Carrier's witness and evaluate the fourteen (14) exhibits.

On March 19, 2015 the Assistant Chief Engineer notified Claimant that, "In consideration of the Investigation findings, you are [assessed] a Ten (10) day actual working suspension" for violating GCOR Rule 1.6 - Conduct. The rule states:

Employees must not be:

1. Careless of the safety of themselves or others.
 2. Negligent.
 3. Insubordinate.
 4. Dishonest.
 5. Immoral.
 6. Quarrelsome.
- or

7. Discourteous.

Any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated.

On May 12, 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 [the] 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: (A) notice of investigation, (B) transcript of investigation and all related exhibits, (C) discipline assessment letter and (D) on-property correspondence related to progression of the claim.

After the examination of Roadmaster Rohrbeck the Organization objected to the continuation of the hearing as the Claimant and other employees provided written statements for an FRA investigation into a safety hazard of an unlocked mainline switch and those statements show no wrongdoing by Claimant or the other employees. Based on the foregoing, the Organization alleged that "the Carrier evidently had a predetermined outcome of the investigation proceedings." A review of the record shows that Claimant received a fair and impartial hearing; there were no prejudicial statements or actions by the presiding official showing a predetermined outcome.

On February 11, 2015 Roadmaster Rohrbeck and FRA Inspector Bullock performed a hi rail track inspection between Portage and Watertown. They conducted an inspection of the turnout switch at the end of the East Rio Storage Track and discovered a lock for the mainline switch was not on the switch but on the ground next to the switch stand. The FRA Inspector cited the Carrier for the following FRA defect - - "Hand-operated switches, including crossover switches: failure to ensure a switch is locked, hooked, or latched when not in use[.]"

Claimant Heald and other employees were at the switch at the end of the East Rio Storage Track on February 6, 2015. They were the last employees at the switch prior to the FRA inspection on February 11, 2015. Documents from Wisconsin Dispatch establish Claimant having track and time at the location of the unsecured switch as he was inspecting track with Foreman Roth. Assistant Foreman Ortega, Machine Operator Snow and Laborer Fiege were at the end of East Rio Storage Track performing maintenance on the turnout switch, e.g., cleaning switch, replacing bolts. There is no transmission of switches being lined, locked and checked for the mainline; however, the CTC computer screen shows occupancy on the track during a period when Claimant Heald had track and time and indicating the switch at East Rio Track Storage was lined.

Claimant did not have authority to line the switch; however, Claimant's digital track notebook ("DTN") for East Rio Track Storage on February 6, 2015 shows Claimant documenting that he inspected, operated and lined the switch. Claimant was negligent in recording that he operated the switch when he did not operate it. Claimant acknowledged that his written statement is inaccurate as he did not have permission to open the switch. Claimant testified he did not leave the switch unsecured and he also testified that he did not recall observing whether the switch was secured or unsecured during his inspection.

Given the documented presence of Claimant in the area of the unsecured switch on February 6, 2015 the absence of any other crews in that area between February 5 and 11, 2015 and Claimant's testimony contradicting his written statement, there is substantial evidence supporting Roadmaster Rohrbeck's testimony that Claimant's negligence on February 6 violated GCOR Rule 1.6 - Conduct. Since the Carrier's actions are not arbitrary, capricious or an abuse of discretion, the discipline assessed remains undisturbed.

Award

Claim denied.



Patrick Halter
Neutral Member

Dated on this 28th day of
November, 2016