

PUBLIC LAW BOARD NO. 7544

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

Case No. 22
Award No. 22
System File D-29a-15-445-08

Background

On April 23, 2015 the Carrier issued a notice of formal investigation and hearing to Claimant S. Whedon and Claimant R. Powell stating as follows:

"The purpose of the investigation/hearing is to determine the facts and circumstances and to place responsibility, if any, for your alleged involvement in the improper use of Company equipment and performing non-company related tasks on Company time on April 20, 2015 at or near MP 37.5 and Sturtevant Yard in Sturtevant, WI. This indicates a possible violation of, but is not limited to, the following rules:

GCOR Rule 1.25 Credit or Property

GCOR Rule 1.15 Duty - Reporting or Absence

Engineering Safety Core Rule 7 - Authorized use of equipment

GCOR 1.6 - Conduct

GCOR 1.19 - Care of Property"

On May 5, 2015 the Investigation/hearing convened wherein Claimants and their representative were afforded the opportunity to present testimony and other evidence as well as cross-examine the Carrier's witness and evaluate the Carrier's five (5) exhibits.

On May 20, 2015 the Director of Track - St. Paul Territory issued to each Claimant a letter of discipline assessment stating that "full consideration has been given to the investigation/hearing" evidentiary record. The Director concluded the following:

"Testimony presented in the investigation/hearing indicates that you were
In violation of:

GCOR 1.6 Conduct

GCOR Rule 1.15 Duty

GCOR 1.19 Care of Property

GCOR Rule 1.25 Credit or Property"

Based on the investigation/hearing record, the Director assessed each Claimant a ten (10) day actual working day suspension.

On June 5, 2015 the Organization and the Carrier agreed to progress Claimant Whedon's discipline dispute D-29a-15-445-07 and Claimant Powell'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.

Pursuant to the PLB Agreement for this Board, the evidentiary record in this proceeding is comprised of the following: (A) notice of investigation, (B) transcript of the investigation and all related exhibits, (C) discipline assessment letter and (D) on-property correspondence related to progression of the claim. Within this evidentiary framework defined by the parties, the Board renders these findings.

On April 19, 2015 Claimant Whedon, while inspecting track near Mile Post 37.5, discovered an ATV approximately eight (8) feet off the track's side. The next day (April 20, 2015), Claimant Whedon and Claimant Powell were performing track maintenance in this area. Claimant Powell used the boom truck to load the ATV into the rear of the material truck. At approximately 2:30 p.m., Manager Castillo observed Claimant Powell using the Carrier's boom to lift the ATV into Claimant Whedon's personal vehicle truck. At no time did Claimant Weldon or Claimant Powell notify a supervisor or manager of the ATV.

There is substantial evidence that Claimants used Company equipment and performed non-company related tasks on Company time on April 20, 2015 at or near MP 37.5 and Sturtevant Yard. Claimant Weldon and Claimant Powell were rules qualified at the time of this incident. Claimants actions and conduct on April 20, 2015 violated the following rules:

1. GCOR Rule 1.25 - Credit or Property where "[e]mployees must care for all articles of value found on railroad property and promptly report the articles to the proper authority." Claimants never reported the article of value ATV.
2. GCOR Rule 1.15 - Duty and Reporting or Absence where "[employees] must spend their time on duty only for the railroad." Claimants used Carrier equipment on duty time to load the ATV onto Claimant Weldon's personal vehicle for the intended purpose of Claimant Weldon's personal use.
3. GCOR Rule 1.6 - Conduct, specifically, willful disregard of duties. While on duty Claimants used the Carrier's equipment for personal purpose.

4. GCOR Rule 1.19 - Care of Property where "[e]mployees must not use railroad property for their personal use." Claimants used Carrier property to remove the ATV from a Carrier vehicle into a personal vehicle while on duty.

As there is substantial evidence supporting the rules violations and the discipline imposed is not an abuse of discretion, arbitrary or capricious, the claim will be denied.

Award

Claim denied.


Patrick Halter
Neutral Member

Dated on this 28th day of
November, 2016